

**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 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 1-00087

EASTMAN KODAK COMPANY
(Exact name of Registrant as specified in its Charter)

New Jersey
(State or other jurisdiction of incorporation or organization)
343 State Street, Rochester, New York
(Address of principal executive offices)

16-0417150
(I.R.S. Employer Identification No.)
14650
(Zip Code)

Registrant's telephone number, including area code: **(585) 724-4000**

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	KODK	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 15(d) of the Act. Yes No

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 type="checkbox"/>	Accelerated filer	<input checked="" 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 control 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 Exchange Act). Yes No

The aggregate market value of the voting common equity held by non-affiliates of the Registrant, based on the closing price of the shares of common stock on June 30, 2022, was approximately \$294 million.

The number of shares of Registrant's Common Stock outstanding as of March 8, 2023 was 79,140,439.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive Proxy Statement for the registrant's Annual Meeting of Shareholders to be held on May 17, 2023 have been incorporated by reference into Part III of this Annual Report on Form 10-K.

Eastman Kodak Company
Form 10-K
December 31, 2022

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PART I

ITEM 1. BUSINESS

When used in this report, unless otherwise indicated, “we,” “our,” “us,” the “Company” and “Kodak” refer to the consolidated company on the basis of consolidation described in Note 1 to the consolidated financial statements in Part II, Item 8, “Financial Statements and Supplementary Data” of this Form 10-K Report.

Kodak is a global manufacturer focused on commercial print and advanced materials and chemicals. Kodak provides industry-leading hardware, software, consumables and services primarily to customers in commercial print, packaging, publishing, manufacturing and entertainment. With 31,000 patents earned over 130 years of R&D, we believe in the power of technology and science to enhance what the world sees and creates. Our innovative, award-winning products, combined with our customer-first approach, allow us to attract customers worldwide. Kodak is committed to environmental stewardship, including industry leadership in developing sustainable solutions for print.

The Company was founded by George Eastman in 1880 and incorporated in 1901 in the State of New Jersey. Kodak is headquartered in Rochester, New York.

DESCRIPTION OF THE BUSINESS

Kodak’s operations are classified into four reportable segments: Traditional Printing, Digital Printing, Advanced Materials and Chemicals and Brand. The balance of Kodak’s continuing operations, which do not meet the criteria of a reportable segment, are reported in All Other and primarily represent the Eastman Business Park (“EBP”) operations.

Traditional Printing

The Traditional Printing segment is comprised of Prepress Solutions, which includes Kodak’s digital offset plate offerings and computer-to-plate (“CTP”) imaging solutions. The Traditional Printing segment provides digital and traditional product and service offerings to a variety of commercial industries, including commercial print, direct mail, book publishing, newspapers and magazines and packaging.

This segment is experiencing challenges from higher raw material and other supply chain costs, digital substitution and competitive pricing pressures. Refer to the Business Overview and Strategy section of Item 7, “Management’s Discussion and Analysis” for additional information on the opportunities and challenges related to Traditional Printing.

The goal of Prepress Solutions is to pursue a contract-based, stable and recurring cash flow-generative business model. The average duration of customer contracts is two years. These contracts generate recurring revenue. The core of the business is the manufacturing of aluminum digital printing plates of varying sizes. These plates can be as small as 23cm x 27cm and as large as 126cm x 287cm. Unexposed plates are sold to commercial printing companies for use in the offset printing process. Kodak also manufactures equipment, known as CTP equipment, which images the plates with a laser. The plates are used in the offset printing process, which transfers ink from the plate onto a rubber blanket and then onto the substrate to be printed. Due to the nature of the imaging and printing process, a new plate must be used for each printing run. As a result, there is a recurring revenue stream from the sale of these plates.

The Traditional Printing products and services are sold globally to customers through both a direct sales team as well as indirectly through dealers and channel partners.

Kodak’s primary competitors are Fuji and Agfa. Kodak expects to benefit from current industry trends, including customers’ increasing focus on sustainability initiatives, which may strengthen demand for Kodak’s process-free solutions.

Digital offset plate offerings include KODAK SONORA Process Free Plates. Instead of the traditional process in which a plate is run through processing equipment containing a solution of developer, chemicals and water to set the image, KODAK SONORA Process Free Plates enable printers to set the image on the platesetter, then go directly to press. There’s also no processing variability, so process-free plate users benefit from more consistent and stable plates. It’s designed to be a much more environmentally friendly approach that could eliminate all processing chemicals, water and excess energy and waste from the plate-making process. These plates are designed to deliver cost savings and efficiency for customers and promote environmental sustainability practices.

Net sales for Traditional Printing accounted for 59%, 57% and 58% of Kodak's total net revenue for the years ended December 31, 2022, 2021 and 2020, respectively.

The Traditional Printing segment also provides service and support related to these products.

On September 1, 2019 Kodak established a strategic relationship with Lucky HuaGuang Graphics Co. Ltd ("HuaGuang") in the People's Republic of China. The relationship is comprised of an agreement under which Kodak sold its shares of the Kodak (China) Graphic Communication Co. Ltd. entity, which included the offset printing plates facility in Xiamen, China, and related assets and liabilities, to HuaGuang; a supply agreement for HuaGuang to help Kodak fulfill customer demand; and a license agreement under which Kodak licensed its plates technology, including its Sonora Process Free plates technology, to HuaGuang with the intent of expanding the plates market in China. As part of the arrangement, Kodak established an escrow in China to secure minimum payments required under the supply agreement. The escrow balance as of December 31, 2022 approximated \$5 million.

Digital Printing

The Digital Printing segment contains PROSPER, Software, Electrophotographic Printing Solutions and Versamark. Digital Printing products include high-quality digital printing solutions using electrically charged toner-based technology, production press systems, consumables (primarily ink), inkjet components, software and services. Digital Printing products are distributed directly by Kodak and indirectly through dealers. The markets that the Digital Printing segment serves are highly competitive in variable printing applications like direct mail, newspapers, books, and packaging/labels. Key competitors are HP, Canon, Ricoh and Screen. Products and services included in Kodak's offerings are described below.

- *Prosper:*
 - The PROSPER business product offerings, including the PROSPER Press systems and PROSPER Components, feature ultrafast inkjet droplet generation. This includes the PROSPER 6000 Press, which delivers a continuous flow of ink that enables constant and consistent operation, with uniform ink droplet size and accurate placement, even at very high print speeds. Applications of the PROSPER Press include publishing, commercial print, direct mail and packaging on a variety of substrates. PROSPER System Components are integrated into original equipment manufacturer ("OEM") partner products and systems. Sales of equipment that incorporate the PROSPER Writing Systems result in recurring revenue from sales of ink and other consumables and equipment service. The level of recurring revenue depends on the application for which the equipment is used, which drives the total number of pages printed and, therefore, the amount of ink usage. The business model is further supplemented by consumption of other consumables including refurbished jetting modules and service.
 - The focus of the PROSPER business is on developing innovative solutions for customers which includes Kodak's next generation inkjet platform, Ultrastream, with solutions that place writing systems in OEM products and systems as well as direct sale press products that widens its reach into applications for packaging and décor and expands the substrate range to include plastics.
- *Software:*
 - The Software business offers a leading suite of solutions for print production workflow, including the PRINERGY workflow production software, by providing customer value through automation, web integration and integration with other Kodak products and third-party offerings. Production workflow software is used by customers to manage digital and conventional print content from file creation to output. Production workflow software manages content and color, reduces manual errors and helps customers manage the collaborative creative process. Kodak believes it is a leader in production workflow solutions for the commercial print and packaging industries with over 15,000 systems installed in some of the largest printing and packaging establishments around the world. Kodak added its cloud-based PRINERGY On Demand Platform to its PRINERGY offerings in 2022.
 - The Software business includes digital front-end controllers which manage the delivery of personalized content to digital presses while controlling color and print consistency.

- *Electrophotographic Printing Solutions:*
 - NEXFINITY printers produce high-quality, differentiated printing of short-run, personalized print applications, such as direct mail, books, marketing collateral and photo products.
 - The ASCEND printer is a new electrophotographic press aimed at the retail, point of purchase and packaging markets. ASCEND printers enable customers to print and embellish on heavyweight stocks and are designed for customers looking to create short-run packaging, displays and signage.
 - Kodak has ceased manufacturing of NEXFINITY and ASCEND printers effective December 2022. Kodak will continue to offer ink and other consumables as well as provide service to its installed base of printers.
- *Versamark:*
 - The KODAK VERSAMARK products are the predecessor products to the PROSPER business. Kodak has ceased manufacturing VERSAMARK Press Systems. Users of KODAK VERSAMARK products continue to purchase ink and other consumables as well as service from Kodak. Applications of the VERSAMARK products include publishing, transactional, commercial print and direct mail.

Net sales for Digital Printing accounted for 19%, 22% and 23% of Kodak's total net revenue for the years ended December 31, 2022, 2021 and 2020, respectively.

Advanced Materials and Chemicals

The Advanced Materials and Chemicals segment is comprised of three lines of business: Industrial Film and Chemicals, Motion Picture and Advanced Materials and Functional Printing. Kodak Services for Business ("KSB"), which provided business process outsourcing services, was sold to Swiss Post Solutions in December 2020. Kodak's Advanced Materials and Chemicals products are distributed directly by Kodak and indirectly through dealers. Kodak Alaris, a professional and consumer still photographic film and chemicals customer, represented approximately 32% of total Advanced Materials and Chemicals segment revenues in both 2022 and 2021 and 30% in 2020. Products and services included in Kodak's offerings are described below.

The Advanced Materials and Chemicals segment includes the Kodak Research Laboratories which conduct research, develop new product or new business opportunities such as Kodak's growth initiatives of printed electronics, light blocking treatment for fabrics and diagnostic test reagents and file patent applications for its inventions and innovations.

The Advanced Materials and Chemicals segment also manages licensing of its intellectual property to third parties and is a supporting participant for any licensing of Kodak intellectual property to a third party. Kodak maintains a large worldwide portfolio of pending applications and issued patents.

- *Industrial Film and Chemicals:*
 - Offers professional and consumer still photographic film, as well as industrial film, including films used by the electronics industry to produce printed circuit boards.

- Includes related component businesses: Specialty Chemicals; Solvent Recovery; and Polyester Film. Specialty Chemicals include unregulated key starting materials (“KSMs”) for pharmaceuticals. Kodak intends to continue organic expansion of its KSM production and is exploring opportunities to further expand its pharmaceutical offerings. Specialty Chemicals also includes specialty materials for batteries (e.g., electric vehicles (“EV”) and others) and specific functional materials for personal care products.
- Offers specialty inks and dispersions to third parties.
- Offers coating and product commercialization services: offerings include both pilot-scale and production scale roll-to-roll coating capabilities utilizing Kodak’s assets and know-how to commercialize and manufacture third-party products.
- *Motion Picture:*
 - Includes the motion picture film business serving the entertainment industry. Motion picture products are sold directly to studios, external laboratories and independent filmmakers.
 - Kodak motion picture film processing laboratories offer onsite processing services at strategic locations in the U.S. and Europe.
- *Advanced Materials and Functional Printing:*
 - Advanced Materials develops solutions for component smart materials based on the materials science inventions and innovations from the research laboratories. There are multiple applications that Kodak contemplates addressing in this category. Currently, the primary focus is on light blocking particles (Kodalux) for the textile market. In addition, a specialty material is manufactured by this group for use by a 3D printing customer.
 - Functional Printing concentrates on contract manufacturing, development partnerships, and/or licensing opportunities in very high-resolution micro-3D printing solutions such as printed electronics and printed transparent antennas. Development partnerships may include non-recurring engineering payments for Kodak’s efforts to further develop such technologies into products. Also, a portfolio of products is offered to enable others to utilize functional printing.
- *IP Licensing and Analytical Services:*
 - Kodak actively seeks opportunities to leverage its patents and associated technology in licensing and/or cross-licensing deals to support both revenue growth and its ongoing businesses. While revenues from these licensing activities tend to be unpredictable in nature, this segment carries the potential for revenue generation from intellectual property licensing and new materials businesses. Kodak also provides a wide range of analytical services to external clients at competitive rates.

Refer to the Business Overview and Strategy section of Item 7, “Management’s Discussion and Analysis” for additional information on the opportunities related to Advanced Materials and Chemicals growth initiatives.

Net sales for Industrial Film and Chemicals accounted for 15%, 14% and 13% of Kodak’s total net revenue for the years ended December 31, 2022, 2021 and 2020, respectively.

Brand

The Brand segment includes licensing of the Kodak brand to third parties. Kodak currently licenses its brand for use with a range of products including digital, instant print and 35mm film cameras, printing and scanning consumer use devices, batteries, apparel and eyewear. Kodak intends to continue efforts to grow its portfolio of brand licenses to generate both ongoing royalty streams and upfront payments. Brand licensees use the Kodak brand on their products and use their own distribution channels.

RAW MATERIALS

The raw materials used by Kodak are many and varied and are generally readily available. Lithographic aluminum is the primary material used in the manufacture of offset printing plates. Kodak procures lithographic aluminum coils from several suppliers with pricing based on prevailing market prices for aluminum. Lithographic aluminum is experiencing significantly increased prices and demand. Electronic components are used in the manufacturing of commercial printers and other electronic devices. The film and chemicals business uses many raw materials, including silver, from a broad range of suppliers. While most raw materials are generally available from multiple sources, certain key electronic components, other components and specialty chemicals included in the finished goods manufactured by Kodak and manufactured by and purchased from Kodak's third-party suppliers are obtained from single or limited sources, which subjects Kodak to supply risks. Refer to the Executive Overview section of Item 7, "Management's Discussion and Analysis" for a discussion of the impact of the COVID-19 pandemic and other global events for additional information.

SEASONALITY OF BUSINESS

Printing equipment and plate unit sales generally are higher in the fourth quarter, resulting from customer or industry budgeting practices and buying patterns.

RESEARCH AND DEVELOPMENT

Kodak's general practice is to protect its investment in research and development and its freedom to use its inventions by obtaining patents. The ownership of these patents contributes to Kodak's ability to provide industry-leading products. Kodak holds portfolios of patents in several areas important to its business, including specific technologies such as lithographic printing plates and related equipment systems; digital printing workflow and color management proofing systems; color and black-and-white electrophotographic printing systems including key press components and toners; commercial inkjet writing systems and components, presses and inks; custom and specialty materials for 3D printing, functional printing materials, material formulations, and deposition modalities; engineered microparticles for specific functions; security materials; and embedded information. Each of these areas is important to existing and emerging business opportunities that bear directly on Kodak's overall business performance.

In addition to patents, Kodak's intellectual property includes know-how in many of the areas noted above, but in other businesses as well, such as color negative films, processing and print films and manufacturing of KSMs for the pharmaceutical industry.

Kodak's major products are not dependent upon one single, material patent. Rather, the technologies that underlie Kodak's products are supported by an aggregation of patents having various remaining lives and expiration dates. There is no individual patent, or group of patents, whose expiration is expected to have a material impact on Kodak's results of operations.

ENVIRONMENTAL MATTERS

Kodak is subject to a wide variety of increasingly stringent federal, state, local, and foreign environmental laws and regulations, including laws addressing the discharge of pollutants into the air and water, the management and disposal of hazardous substances and wastes, and the cleanup of contaminated sites. It is Kodak's policy to carry out its business activities in a manner consistent with sound health, safety and environmental management practices, and to comply with applicable health, safety and environmental laws and regulations. Kodak continues to engage in programs for environmental, health and safety protection and control.

A liability for environmental remediation and other environmental costs is accrued when it is considered probable that a liability has been incurred and the amount of loss can be reasonably estimated. Environmental costs and accruals are presently not material to Kodak's operations, cash flows or financial position. Although there is no assurance that existing or future environmental laws applicable to operations or products will not have a material adverse effect on operations, cash flows or financial condition, Kodak does not currently anticipate material expenditures to comply with environmental laws and regulations.

Kodak is focused on developing and delivering products and technologies that can drive sustainability performance by increasing operational efficiency, minimizing resource use, reducing costs over time and empowering customers to meet their own sustainability objectives.

The opportunity to reduce the environmental impact of its products and services is especially great for print products, as commercial printing has historically been a significant source of waste and pollution. Kodak is developing in-house life cycle assessment and carbon foot printing capabilities, which will help identify where the environmental footprint of Kodak's products can be further reduced.

HUMAN CAPITAL

As of January 1, 2023, Kodak employed approximately 4,200 employees across 35 countries. Kodak's success greatly depends on identifying, attracting, engaging, developing, and retaining a highly skilled workforce in multiple areas within Kodak. Outside the U.S. there are employees in certain countries that are represented by unions or similar organizations, such as works councils, or are covered by collective bargaining agreements .

Kodak utilizes temporary staffing programs to develop a pipeline of talent and provide additional support during peak periods. This includes working closely with local schools to provide apprentice and intern programs. Approximately 2% of its workforce is temporary.

Diversity, Equality and Inclusion

Kodak is focused on creating an inclusive and creative environment globally. Kodak strives to create a culture of inclusion, reduce bias in its talent practices, and invest in and engage with its communities. Kodak conducts diversity and code of conduct trainings with employees and managers to promote an inclusive and diverse workplace, where all individuals feel respected and part of a team regardless of their race, national origin, ethnicity, gender, age, religion, disability, sexual orientation or gender identity.

Kodak has achieved a score of 100% on the Human Rights Campaign Foundation's Corporate Equality Index for over two decades and is included on its list of "Best Places to Work for LGBTQ+ Equality".

Health, Wellness and Safety

Kodak is dedicated to driving continuous safety improvement across its operations. Kodak's approach includes identifying and mitigating risk, targeted training, information sharing on safe work practices, and thorough analysis of incidents and near misses.

The COVID-19 pandemic magnified the importance of keeping employees safe and healthy. In response to the pandemic, Kodak has taken actions consistent with government mandates and continues to track active cases. The Executive Leadership Team reviews the impact of and responds to COVID-19 on a regular basis. Kodak will continue to emphasize the health and safety of its employees going forward.

AVAILABLE INFORMATION

Kodak files many reports with the Securities and Exchange Commission ("SEC") (www.sec.gov), including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K. These reports, and amendments to these reports, are made available free of charge as soon as reasonably practicable after being electronically filed with or furnished to the SEC. They are available through Kodak's website at www.Kodak.com. To reach the SEC filings, follow the links to Company, About Us, Investor Center, Financials and then SEC Filings.

ITEM 1A. RISK FACTORS

Kodak operates in rapidly changing economic and technological environments which present numerous risks and uncertainties. The risk factors described below, if realized, could have a material adverse effect on Kodak's business, financial condition, and results of operations and make an investment in our securities risky. You should carefully consider these risks and uncertainties in addition to other information contained in this Annual Report on Form 10-K, including the Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") section and the consolidated financial statements and related notes.

Summary of Risk Factors

The following is a summary of the risk factors Kodak faces. The list is not exhaustive, and investors should read this "Risk Factors" section in full. Some of the risks Kodak faces include:

Summary of Risks Related to Kodak's Business and Operations

- *Kodak's business, financial condition and results of operations have been and may continue to be adversely affected by global economic and geopolitical conditions, including the impact of the COVID-19 pandemic, the war in Ukraine, inflation, rising interest rates, and slowdowns in customer demand.*
- *The ability to generate positive operating cash flows will be necessary for Kodak to continue to operate our business.*
- *If Kodak is unable to continue successful development, funding, and commercialization of products in businesses upon which we are focused or do so within an acceptable timeframe, Kodak's financial performance could be adversely affected.*
- *If Kodak is unable to successfully or timely implement cost structure reductions, Kodak's business, financial condition and results of operations could be negatively affected.*
- *The loss of one or more of Kodak's key personnel, or our failure to attract and retain other highly qualified personnel in the future, could harm our business.*
- *If Kodak cannot effectively anticipate or rapidly respond to technology trends and develop and market new products to respond to changing customer needs and preferences, our revenue, earnings and cash flow could be adversely affected.*
- *Kodak's investment in new products and services may not achieve expected returns.*
- *If Kodak does not manage product reliability, yield and quality, our product launch plans may be delayed, our financial results may be adversely impacted, and our reputation may be harmed.*
- *Aging manufacturing facilities and equipment could lead to failures of equipment and systems.*
- *Cyber-attacks or other data security incidents that disrupt Kodak's operations or result in the breach or other compromise of proprietary or confidential information about our workforce, our customers, or other third parties could disrupt our business, harm our reputation, cause us to lose customers, and expose us to costly regulatory enforcement and litigation, any of which could lead to material adverse effects on Kodak's results of operations, business and financial condition.*
- *If Kodak fails to manage distribution of our products and services properly, our revenue, gross margins and earnings could be adversely impacted.*
- *Kodak's inability to effectively complete and manage strategic transactions could adversely impact our business performance, including our financial results.*
- *Failure to successfully manage the development and improvement of IT systems could diminish or delay any anticipated efficiencies and operational improvements, and our operations and business could be disrupted.*
- *If Kodak cannot protect the intellectual property rights on which our business depends, or if third parties assert that we violate their intellectual property rights, our revenue, earnings, expenses and liquidity may be adversely impacted.*
- *If the reputation of Kodak or its brand erodes significantly, it could have a material impact on our financial results.*
- *Increased competition, including price competition, could have a material adverse impact on Kodak's revenue, gross margins, cash flow and market share.*
- *Business disruptions could seriously harm Kodak's future revenue and financial condition.*

- *Kodak relies on third-party suppliers and service providers to support our manufacturing, logistics, and business operations and faces the risks associated with reliance on external business partners.*
- *Due to the nature of the products we sell and Kodak's worldwide distribution, Kodak is exposed to fluctuations in foreign currency exchange rates, interest rates and commodity costs which, together with tariffs that may be imposed, may adversely impact our results of operations and financial position.*
- *Kodak faces additional costs and risks associated with our worldwide business operations.*
- *An inability to provide competitive financing arrangements to Kodak's customers or extension of credit to customers whose creditworthiness deteriorates could adversely impact our revenue, profitability and financial position.*

Summary of Risks Related to Kodak's Indebtedness and Access to Capital Markets

- *The Company's substantial monetary obligations require a portion of our cash flow be used to fund other obligations rather than be invested in the business and could adversely affect our ability to fund our operations.*
- *The availability of borrowings and letters of credit under the ABL Credit Agreement and LC Credit Agreement is limited by the amount of various types of assets and, under certain circumstances, the administrative agent under the ABL Credit Agreement will have greater control over Kodak's cash.*
- *Kodak may desire additional capital funding and such capital may not be available to us and/or may be limited.*
- *There can be no assurance the Company will be able to comply with the terms of our various credit facilities.*
- *The current non-investment grade status and Kodak's financial condition may adversely impact Kodak's commercial operations, increase our liquidity requirements and increase the cost of refinancing opportunities. We may not have adequate liquidity to post required amounts of additional collateral.*

Summary of Legal, Regulatory and Compliance Risks

- *Legal proceedings and governmental investigations associated with the U.S. International Development Finance Corporation announcement or in general could have a material adverse effect on our business operations and prospects, reputation, financial condition, results of operations and stock price.*
- *Failure to comply with anti-corruption laws and regulations, anti-money laundering laws and regulations, economic and trade sanctions, and similar laws could have a materially adverse effect on Kodak's reputation, results of operations or financial condition, or have other adverse consequences.*
- *Failure to comply with privacy, data protection and cyber security laws and regulations could have a materially adverse effect on Kodak's reputation, results of operations or financial condition.*
- *Kodak is subject to environmental laws and regulations. Failure to comply with such laws and regulations or liabilities imposed as a result of such laws and regulations could have an adverse effect on our business, results of operations and financial condition.*
- *If Kodak fails to maintain effective internal controls over financial reporting, we may not be able to accurately report our financial results, which could have a material adverse effect on Kodak's operations, investor confidence in our business and the trading prices of our securities.*
- *Kodak may have additional tax liabilities.*

- *Kodak's future pension and other postretirement benefit plan costs and required level of contributions could be unfavorably impacted by changes in actuarial assumptions, market performance of plan assets and obligations imposed by legislation or pension authorities which could adversely affect our financial position, results of operations, and cash flow.*
- *Kodak may be required to recognize impairments in the value of our goodwill and/or other long-lived assets which could adversely affect our results of operations.*

Summary of Risks Related to the Company's Common Stock

- *The conversion of the Series B Preferred Stock, Series C Preferred Stock and 2021 Convertible Notes into shares of the Company's common stock may dilute the value for the current holders of the Company's common stock.*
- *The holder of the Series C Preferred Stock owns a large portion of the voting power of the Company's outstanding securities, and the holders of the Series C Preferred Stock and 2021 Convertible Notes each have the right to nominate one member for election to the Company's Board. As a result, these holders may influence the composition of the Board and future actions taken by the Board.*
- *The Company has registered, and has a duty to register, the resale of a large portion of our outstanding securities. The resale of the Company's common stock, or the perception that such resale may occur, may adversely affect the price of our common stock.*
- *The resale of a significant portion of the Company's securities or certain accumulations or transfers of the Company's securities could result in a change of control of the Company and the loss of favorable tax attributes.*
- *The Company's stock price has been and may continue to be volatile.*

Risks Related to Kodak's Business and Operations

Kodak's business, financial condition and results of operations have been and may continue to be adversely affected by global economic and geopolitical conditions, including the impact of the COVID-19 pandemic, the war in Ukraine, inflation, rising interest rates, and slowdowns in customer demand.

Worsening global economic conditions, including those associated with the COVID-19 pandemic, the war in Ukraine, and rising interest rates, could have material adverse impacts on Kodak's business, cash flows, employees, suppliers, customers, and others' ability to conduct business, including increased operational costs, extended business shutdowns, reduced operations, restrictions or interruptions in shipping, manufacturing or installing products, reduced consumer demand and the reduced ability of our customers to make payments. Accounts receivable and past due accounts could increase due to a decline in our customers' ability to pay, and our liquidity, including our ability to use credit lines, could be negatively impacted by failures of financial instrument counterparties, including banks and other financial institutions.

Due to the global economic impact of the COVID-19 pandemic and the war in Ukraine, we have and may continue to experience additional operating costs due to increased cost of energy, shipping, raw materials and labor, limited availability of raw materials and component products, delays in shipping and transportation and a decline in customer demand. Kodak's products contain aluminum, silver, petroleum-based or other commodity-based raw materials, the prices of which have significantly increased, and could continue to increase. Ongoing disruptions in our supply chain could affect our ability to continue to meet customer demand for our products and services. Continued or worsening operational and global economic conditions could materially affect our business, financial condition or results of operations. The extent to which the global economic conditions affect our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of COVID-19 and variants, the actions taken in response to the pandemic, the continued impact of the war in Ukraine, any escalation thereof, and the impact of the international response thereto. For additional discussion regarding known impacts of the COVID-19 pandemic, the war in Ukraine and the global economic environment, see Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this Annual Report on Form 10-K.

The ability to generate positive operating cash flows will be necessary for Kodak to continue to operate our business.

Continued investment, capital needs, restructuring payments, dividends and servicing Kodak's debt require a significant amount of cash and we may not be able to generate sufficient cash to fund these activities, which could adversely affect our business, financial condition, and results of operations. Kodak has not generated positive operating cash flows without supplementing such cash flow from operations with financing and monetization transactions over the past several years. Kodak's businesses may not grow or continue to generate the same or enough cash flow.

It may take Kodak longer than planned to generate positive cash flow from operations, which would have a material adverse effect on our liquidity and financial position. If Kodak is unable to generate positive cash flow from operations for an extended period in the future or to adequately supplement such cash flow from operations, our ability to continue as a going concern could be impaired or limited.

Kodak's ability to generate cash is subject to general economic, financial, competitive, legal, regulatory and other factors beyond our control. There are no assurances:

- Kodak's businesses will generate sufficient cash flow from operations;
- Kodak will be able to repatriate or move cash to locations where and when it is needed;
- Kodak will meet all conditions associated with borrowings or issuing letters of credit under the ABL Credit Agreement;
- Kodak will realize cost savings, earnings growth or operating improvements resulting from the execution of our business and restructuring plan;
- Kodak will not have to expend cash defending lawsuits regardless of the merits of any claims raised; or
- Future sources of funding will be available in amounts sufficient to enable funding of our liquidity needs.

Kodak's business may not generate cash flow in an amount sufficient to enable us to pay the principal or mandatory redemption price of, or interest and dividends on, the senior secured first lien term loans (the "Term Loans") borrowed under the Credit Agreement, dated February 26, 2021, by and among the Company, the lenders party thereto (the "Term Loan Lenders"), and Alter Domus (US) LLC, as Administrative Agent (the "Term Loan Credit Agreement"), the 5.0% unsecured convertible notes held by the Term Loan Lenders (the "2021 Convertible Notes"), the 4.0% Series B Convertible Preferred Stock of the Company (the "Series B Preferred Stock"), and the 5.0% Series C Convertible Preferred Stock of the Company (the "Series C Preferred Stock"), or to fund Kodak's other liquidity needs, including working capital, capital expenditures, product development efforts, restructuring actions, collateral requirements, strategic acquisitions, investments and alliances and other general corporate requirements.

If Kodak cannot fund our liquidity needs, we will have to take actions, such as reducing or delaying capital expenditures, product development efforts, strategic acquisitions, and investments and alliances; selling additional assets; restructuring or refinancing the Company's debt; or seeking additional equity capital. Such actions could increase the Company's debt, negatively impact customer confidence in our ability to provide products and services, reduce our ability to raise additional capital and delay sustained profitability. There are no assurances any of these actions could, if necessary, be taken on commercially reasonable terms, or at all, or they would satisfy Kodak's liquidity needs.

If Kodak is unable to continue successful development, funding, and commercialization of products in businesses upon which we are focused or do so within an acceptable timeframe, Kodak's financial performance could be adversely affected.

Kodak has focused our investments in print, advanced materials, and chemicals. These investment areas include offset plates and CTP devices, digital printing using commercial inkjet, high resolution functional printing for electronic and optical solutions, specialty chemicals (including pharmaceutical products), coated materials used in electric vehicle/energy storage batteries and smart materials for light control and 3D printing. Each of these businesses requires additional investment and may not be successful. The introduction of successful innovative products at market competitive prices and the achievement of scale are necessary for Kodak to grow these businesses, improve margins and achieve our financial objectives. Additionally, Kodak's strategy is based on a number of factors and assumptions, some of which are not within our control, such as the actions of third parties. There can be no assurance that we will be able to successfully execute all or any elements of our strategy, or that Kodak's ability to successfully execute our strategy will be unaffected by external factors. If Kodak is unsuccessful in growing our investment businesses as planned, or perceiving the needs of our target customers, Kodak's results of operations, financial condition and liquidity could be adversely affected.

If Kodak is unable to successfully or timely implement cost structure reductions, Kodak's business, financial condition and results of operations could be negatively affected.

Kodak continues to rationalize our workforce and streamline operations to a leaner and more focused organization aligned with our business initiatives. There are no assurances that workforce reductions, restructuring efforts and other cost-saving measures will be successful or the cost savings or other beneficial results will be consistent with expectations. The extent of change across our organizational structure, senior leadership, culture, functional alignment, outsourcing and other areas poses risks in the form of personnel capacity constraints and institutional knowledge loss that could lead to diminished results, compliance issues, and harm to our reputation. If workforce reductions, restructuring efforts and other cost-saving measures are not effectively managed, Kodak may also experience lost sales, harm to our business and customer relationships, adverse effects on employee morale, loss of key employees or other retention issues, product delays and increased costs.

Finally, the timing and implementation of workforce reductions may require compliance with laws and regulations, including local labor laws, and the failure to comply with such requirements may result in damages, fines and penalties. Any of these outcomes could negatively impact Kodak's business, financial condition, and results of operations.

The loss of one or more of Kodak's key personnel, or our failure to attract and retain other highly qualified personnel in the future, could harm our business.

In order to be successful, Kodak must continue to attract, retain and motivate executives and other key employees across the Company. Hiring and retaining qualified executives, research and engineering professionals, and qualified sales representatives, particularly in Kodak's targeted growth markets, is critical to our future. The impact of the COVID-19 pandemic has resulted in increased attrition and significant shifts in the labor market and employee expectations. Given that our business is highly technical and specialized, it would be difficult to replace the loss of any of our key employees. Kodak may be unable to attract and retain highly qualified management and employees, particularly if we do not offer employment terms competitive with the rest of the market. Failure to attract and retain qualified individuals, key leaders, executives and employees, or failure to develop and implement a viable succession plan, could result in inadequate depth of institutional knowledge or skill sets, which could adversely affect Kodak's business and results of operations.

If Kodak cannot effectively anticipate or rapidly respond to technology trends and develop and market new products to respond to changing customer needs and preferences, our revenue, earnings and cash flow could be adversely affected.

Kodak generally sells our products in industries which are characterized by rapid technological changes, frequent new product and service introductions and changing industry standards. Kodak's success depends on our ability to offer differentiated solutions and technologies to capture market share and grow scale. To do so, Kodak must continually develop and introduce new products and services in a timely manner to keep pace with technological developments and achieve customer acceptance. In addition, the services and products we provide to customers may not or may no longer meet the needs of our customers as the business models of our customers evolve. Kodak's customers may decide to outsource their imaging and printing needs or may purchase imaging and printing services and needs from other suppliers. In addition, it is difficult to predict successfully the products and services our customers will demand. The success of Kodak's business depends in part on our ability to identify and respond promptly to changes in customer preferences, expectations and needs. If Kodak does not timely assess and respond to changing customer expectations, preferences and needs, our financial condition, results of operations or cash flows could be adversely affected.

If Kodak is unable to timely anticipate new technology trends, develop improvements to our current technology to address changing customer preferences, and effectively communicate our businesses, products, and the markets we serve, our revenue, earnings and cash flow could be adversely affected.

The success of Kodak's technology development efforts may be affected by the development efforts of our competitors, which may have more financial and other resources to better ascertain technology trends, changing customer preferences, and changing business expectations or models. Kodak's assessment and response may as a result be incomplete or inferior when compared to our competitors, which could adversely affect our product roadmaps and associated revenue streams.

Kodak has reduced the scope of our corporate-focused research and development activities. If our investment in research and product development is inadequate, our response to changing customer needs and changing market dynamics may be too slow and this may adversely affect revenue streams from new products and services.

Kodak's investment in new products and services may not achieve expected returns.

Commercial success depends on many factors, including innovativeness, developer support, and effective distribution and marketing. If customers do not perceive Kodak's latest offerings as providing significant new functionality or other value, they may reduce their purchases of new products or upgrades, unfavorably affecting our revenue. Kodak may not achieve significant revenue from new product, service, and distribution channel investments for several years, if at all.

New products and services may not be profitable, and even if they are profitable, operating margins for some new products and businesses may not be as high as the margins Kodak has experienced historically. Developing new technologies is complex. It can require long development and testing periods. Significant delays in new releases or significant problems in creating new products or services could adversely affect Kodak's revenue.

If Kodak does not manage product reliability, yield and quality, our product launch plans may be delayed, our financial results may be adversely impacted, and our reputation may be harmed.

In developing, commercializing, manufacturing and servicing our products and services, Kodak must adequately address reliability and prevent yield and other quality issues, including defects in our engineering, design and manufacturing processes, as well as defects in third-party components included in our products.

Because Kodak's products are sophisticated and complicated to develop and commercialize with rapid advances in technologies, the occurrence of defects may increase, particularly with the introduction of new product lines.

Unanticipated issues with product performance may delay product launch plans which could result in additional expenses, lost revenue and earnings. Although Kodak has established internal procedures to minimize risks which may arise from product quality issues, there can be no assurance we will be able to eliminate or mitigate occurrences of these issues and associated liabilities. Product reliability, yield and quality issues can impair our relationships with new or existing customers and adversely affect our brand image; product quality issues can result in recalls, warranty, or other service obligations and litigation; and our reputation as a producer of high quality products could suffer, all of which could adversely affect our business as well as our financial results.

Aging manufacturing facilities and equipment could lead to failures of equipment and systems.

Kodak's manufacturing facilities are aged, and without significant updates to equipment and systems, will be more prone to failure. Capital improvements to manufacturing facilities are planned but there is risk to manufacturing operations especially due to the complexity of the processes and technology and the loss of knowledge as employees leave who are familiar with the processes and technology. The longer these updates are delayed the higher the risk due to equipment failures, further obsolescence and additional loss of employees with the specific knowledge base. If Kodak's equipment and systems experience a critical failure, we could experience an interruption of operations, manufacturing delays, increased costs associated with repairs or redesigns of systems and products, loss of sales and customers and damage to Kodak's reputation, any of which could have a material adverse effect on our business, financial condition and results of operations.

Cyber-attacks or other data security incidents that disrupt Kodak's operations or result in the breach or other compromise of proprietary of confidential information about our workforce, our customers, or other third parties could disrupt our business, harm our reputation, cause us to lose customers, and expose us to costly regulatory enforcement and litigation, any of which could lead to material adverse effects on Kodak's results of operations, business and financial condition.

To effectively manage our global business, Kodak depends on secure and reliable information technology systems with accurate data. These systems and their underlying infrastructure are provided by a combination of Kodak and third parties, and if unavailable or unreliable, could disrupt Kodak's operations, causing delays or cancellation of customer orders, impeding the manufacturing or delivery of products, delaying the reporting of financial results, or impacting other business processes critical to running our business.

Attacks on IT systems continue to grow in frequency, complexity and sophistication, and Kodak is regularly targeted by unauthorized parties using malicious tactics, code and viruses. The techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently, are increasingly more complex and sophisticated and may be difficult to detect for long periods of time. Therefore, the system controls and security measures Kodak and other third parties use to prevent, detect and respond to data or cyber security incidents may not be sufficient to anticipate and identify these techniques or implement adequate or timely preventive or responsive measures.

Kodak's IT systems contain critical information about our business, including intellectual property and confidential information of our customers, business partners, and employees. Cyber-attacks, breaches or defects in our systems or those of third parties could result in unauthorized access to and misuse of our information, corruption of data, or disruption of operations, any of which could have a material adverse impact on Kodak's business and reputation. The speed to closure of significant cyber security incidents may be influenced by the cooperation of governmental or law enforcement agencies, which is outside of our control.

Kodak also provides IT-based products and services to our customers and operates services used by our customers and hosted by Kodak. A breach of our security or reliability measures, or those of our third-party service providers, could negatively impact our customers' operations or data privacy, which could expose Kodak to liability and reputational harm.

We may be required to incur significant costs to protect against damage caused by cyber-attacks or data security incidents in the future. Such events may expose us to unexpected liability, litigation, regulatory investigation and penalties, loss of customers' business, unfavorable impact to business reputation, any of which could lead to a material adverse effect on our business, financial condition and results of operations.

If Kodak fails to manage distribution of our products and services properly, our revenue, gross margins and earnings could be adversely impacted.

Kodak uses a variety of distribution methods to sell and deliver our products and services, including direct sales, third-party resellers, channel partners and distributors. Successfully managing the interaction of direct and indirect channels across customer segments for our products and services is complex. Since each distribution method has distinct risks and financial implications, Kodak's failure to achieve the most advantageous delivery model for our products and services could adversely affect our revenue and earnings.

Kodak's inability to effectively complete and manage strategic transactions could adversely impact our business performance, including our financial results.

From time to time, Kodak may be engaged in discussions with third parties regarding possible investments, acquisitions, strategic alliances, joint ventures, divestitures, asset sales, spin-offs and outsourcing transactions and may enter into agreements relating to such transactions in order to further our business objectives.

In order to successfully pursue strategic transactions, Kodak must identify suitable sellers, buyers and partners and successfully complete transactions, some of which may be large and complex, and manage post-closing issues such as the elimination of any remaining post-sale costs related to divested businesses. Transaction risk can be more pronounced for larger and more complicated transactions or when multiple transactions are pursued simultaneously. Strategic transactions may involve the following risks and challenges that could negatively impact our results of operations:

- the need to obtain required regulatory and other approvals;
- the need to integrate acquired or combined operations with our business;
- potential loss of key employees;
- difficulty in evaluating operating costs, infrastructure requirements, environmental and other liabilities, and other factors beyond our control;
- wrong, inaccurate, or changing business assumptions on which such acquisitions or combinations are predicated;
- potential lack of operating experience in new business or geographic areas;
- an increase in our expenses and working capital requirements;
- competition for strategic transactions, which may increase transaction costs and the ability to identify opportunities;
- management's attention may be temporarily diverted; and
- the possibility we may be required to issue a substantial amount of additional equity or debt securities or assume additional debt in connection with any such transactions.

There are no assurances Kodak will be able to consummate any strategic transactions which we undertake or, if consummated, Kodak will achieve the anticipated levels of cash flows or realize synergies or other anticipated benefits from a strategic transaction. If Kodak fails to identify and successfully complete transactions that further our strategic objectives, we may be required to expend resources to develop products and technology internally, we may be at a competitive disadvantage or we may be adversely affected by negative market perceptions. Any of these factors could have an adverse effect on Kodak's revenue, gross margins and profitability.

Failure to successfully manage the development and improvement of IT systems could diminish or delay any anticipated efficiencies and operational improvements, and our operations and business could be disrupted.

Kodak is implementing improvements to IT systems to more effectively manage our global business and implement our strategic plans. If Kodak is unable to successfully manage the development, improvement and transition of IT systems, anticipated efficiencies and operational improvements may be delayed or diminished, and we may experience cost overruns, disruption in our operations, or other business or reputational harm, any of which could have a material adverse effect on Kodak's results of operations, business and financial condition.

If Kodak cannot protect the intellectual property rights on which our business depends, or if third parties assert that we violate their intellectual property rights, our revenue, earnings, expenses and liquidity may be adversely impacted.

A key differentiator for Kodak in many of our businesses is our technological advantage over competitors' products and solutions. Our technological advantage is supported by Kodak's intellectual property rights. Patent, copyright, trademark and trade secret laws in the United States and similar laws in other countries, and non-disclosure, confidentiality and other types of agreements with Kodak's employees, customers, suppliers and other parties, may not be effective in establishing, maintaining, protecting and enforcing Kodak's intellectual property rights.

Any of Kodak's direct or indirect intellectual property rights could be challenged, invalidated, circumvented, infringed, diluted, disclosed or misappropriated, or such intellectual property rights may not be sufficient to permit us to take advantage of current market trends or otherwise to provide competitive advantages, which could result in costly product redesign efforts, discontinuance of certain product offerings or other competitive harm. Further, the laws of certain countries do not protect proprietary rights to the same degree as the laws of the United States.

Therefore, in certain jurisdictions, Kodak may be unable to protect our proprietary technology adequately against unauthorized third-party copying, infringement or use, which could adversely affect our competitive position. Also, some of Kodak's businesses and some of our products rely on key technologies developed or licensed by third parties and, because of the rapid pace of technological change in the information technology industry, we may not be able to obtain or continue to obtain licenses and technologies from relevant third parties on reasonable terms, or at all.

Kodak also licenses third parties to use our trademarks. In an effort to preserve our trademark rights, Kodak enters into license agreements with these third parties which govern the use of our trademarks and requires our licensees to abide by quality control standards with respect to the goods and services they provide under the trademarks. Although Kodak makes efforts to police the use of our trademarks by our licensees, there can be no assurance these efforts will be sufficient to ensure the licensees abide by the terms of their licenses. In the event Kodak's licensees fail to do so, our trademark rights could be diluted and our reputation harmed by our licensees' activities. Also, failure by Kodak and our licensees to sufficiently exploit any of Kodak's trademarks in any markets could erode Kodak's trademark rights with respect to the relevant trademarks. Because the laws and enforcement regimes of certain countries do not protect proprietary rights to the same degree as those in the United States, in certain jurisdictions Kodak may be unable to adequately prevent such unauthorized uses, which could result in impairment of our trademark rights.

Kodak has made substantial investments in new, proprietary technologies and has filed patent applications and obtained patents to protect our intellectual property rights in these technologies as well as the interests of our licensees. There can be no assurance Kodak's patent applications will be approved, any patents issued will be of sufficient scope or strength to provide us with meaningful protection, or such patents will not be challenged by third parties. Furthermore, Kodak may fail to accurately predict all of the countries where patent protection will ultimately be desirable, and if we fail to timely file a patent application in any such country, we may be precluded from doing so at a later date. The patents issuing may vary in scope of coverage depending on the country in which such patents issue.

In addition, the intellectual property rights of others could inhibit Kodak's ability to conduct our business. Other companies may hold patents on technologies used in Kodak's industries and some of these companies may be aggressively seeking to expand, enforce or license their patent portfolios. Third parties may claim Kodak and our customers, licensees or other parties indemnified by us are infringing upon their intellectual property rights.

Such claims may be made by competitors seeking to block or limit Kodak's access to certain markets. Additionally, certain individuals and groups have purchased intellectual property assets for the sole purpose of making claims of infringement and attempting to extract settlements from companies like Kodak. Even if we believe the claims are without merit, these claims may have the following negative impacts on our business:

- claims can be time consuming and costly to defend and may distract management's attention and resources;
- claims of intellectual property infringement may require us to redesign affected products, enter into costly settlement or license agreements or pay costly damage awards, or face a temporary or permanent injunction prohibiting us from marketing or selling certain of our products;
- even if we have an agreement with a third party to indemnify us against such costs, the indemnifying party may be unable to uphold such party's contractual obligations; and
- if we cannot or do not license the infringed technology at all, license the technology on reasonable terms or substitute similar technology from another source, Kodak's revenue and earnings could be adversely impacted.

Finally, Kodak uses open source software in connection with some of our products and services. Companies which incorporate open source software into their products have, from time to time, faced claims challenging the ownership of open source software and/or compliance with open source license terms. As a result, Kodak could be subject to suits by parties claiming ownership of what we believe to be open source software or noncompliance with open source licensing terms. Some open source software licenses require users who distribute open source software as part of their software to publicly disclose all or part of the source code to such software and/or make available any derivative works of the open source code on unfavorable terms or at no cost. Any requirement to disclose Kodak's source code or pay damages for breach of contract could be harmful to our business results of operations and financial condition.

If the reputation of Kodak or its brand erodes significantly, it could have a material impact on our financial results.

Kodak's products and brand have worldwide recognition. Kodak's reputation, and the reputation of our brand, form the foundation of our relationships with key stakeholders and other constituencies, including customers, suppliers, distributors, channel partners, consumers and investors. Any harm to the reputation of Kodak or our brand could have a material adverse impact on our results of operations, business and financial condition. The value of Kodak's brand is reflected, in part, in our Brand segment, which licenses the Kodak brand for use by third parties in a wide range of products. Consumers and the public may view the products and activities of brand licensees as the products and activities of Kodak. The measures Kodak undertakes to research and manage licensee relationships and assess the quality of their products may not be sufficient to protect against legal proceedings and reputational harm in the event that licensed products and services do not meet consumer expectations for quality and safety. Other factors that could dilute or damage the reputation of Kodak and our brand include the failure of products and services to meet customer expectations, litigation and government investigations, negative or inaccurate comments in the media, including social media, and failure to meet and manage customer and industry expectations regarding the impact of our business on matters of social responsibility and environmental sustainability.

Increased competition, including price competition, could have a material adverse impact on Kodak's revenue, gross margins, cash flow and market share.

The markets in which Kodak does business are highly competitive with large, entrenched, and well financed industry participants, many of which are larger than Kodak. In addition, we encounter aggressive price competition for many of our products and services from numerous companies globally. Any of our competitors may:

- foresee the course of market developments more accurately than Kodak does;
- sell superior products and provide superior services or offer a broader variety of products and services;
- have the ability to produce or supply similar products and services at a lower cost;
- have better access to materials and supplies and the ability to acquire materials and supplies at a lower cost;
- develop stronger relationships with our suppliers or customers;
- adapt more quickly to new technologies or evolving customer requirements; or
- have access to capital markets or other financing sources on more favorable terms.

As a result, Kodak may not be able to compete successfully with our competitors. Finally, we may not be able to maintain our operating costs or prices at levels which would allow us to compete effectively. Kodak's results of operations and financial condition may be adversely affected by these and other industry-wide pricing pressures. If our products, services and pricing are not sufficiently competitive with current and future competitors, we could also lose market share, adversely affecting our revenue, gross margins and cash flow.

Business disruptions could seriously harm Kodak's future revenue and financial condition.

Worldwide operations could be subject to earthquakes, power shortages or outages, internet, systems and telecommunications failures, cyber-attacks, terrorism and other physical security threats, water shortages, tsunamis, floods, hurricanes, typhoons, fires, extreme weather conditions, failure of critical infrastructure, medical epidemics, including the COVID-19 pandemic, political or economic instability, including war and protests, and other natural or manmade disasters or business interruptions, for which Kodak is predominantly self-insured. The occurrence of any of these business disruptions could cause disruptions to Kodak's operations or the operations of our suppliers, distributors and resellers, or customers and have a material adverse effect on Kodak's results of operations and financial condition.

Certain of Kodak's critical business functions, including our manufacturing and field service operations, cannot be performed remotely, and an inability of Kodak's employees to physically work at our or our customers' locations due to disruptions in service could harm Kodak's operations, perhaps significantly.

The impact of these risks is greater in areas where products are manufactured at a sole or limited number of location(s), and where the sourcing of materials is limited to a sole or limited base of suppliers, since any material interruption in operations in such locations or suppliers could impact Kodak's ability to provide a particular product or service for a period of time.

If our systems are disrupted or fail for any reason, both Kodak and our customers could experience data loss, financial loss, harm to reputation, or significant business interruption. Any delays or failures caused by network outages, software or hardware failures, or other data processing disruptions, could result in our inability to provide services in a timely fashion or at all. We may be required to incur significant costs to protect against damage caused by disruptions or security breaches in the future. Such events may expose us to unexpected liability, litigation, regulatory investigation and penalties, loss of customers' business, and unfavorable impact to business reputation, as a result of which there could be a material adverse effect on our business and results of operations.

Kodak relies on third-party suppliers and service providers to support our manufacturing, logistics, and business operations and faces the risks associated with reliance on external business partners.

Kodak relies on third-party suppliers for goods and services to support our manufacturing, logistics, and business operations. To the extent we rely on third parties, we face the risks that those third parties may not be able to:

- Obtain supplies and materials necessary to deliver goods or services to Kodak;
- Mitigate the impact of labor shortages and/or other disruptions;
- Develop manufacturing methods appropriate to Kodak's products;
- Maintain an adequate control environment; and
- Quickly respond to changes in customer demand for Kodak's products.

Suppliers may choose to unilaterally withhold products, components or services. In addition, Kodak may experience shortages in supply and disruptions in service and supply as a result of unexpected demand, transportation and logistical limitations, and/or disruptions or production difficulties at our suppliers, such as disruptions due to fires, medical epidemics, other natural disasters or events outside of a supplier's control. In addition, disruptions could result from a reduction in the number of our suppliers due to their own financial difficulties or a reduction in the products offered by such suppliers. As a result of the loss of any supplier, or a substantial decrease in the availability of products from our suppliers, Kodak may be unable to meet our customer commitments, our costs could be higher than planned, and our cash flows and the reliability of our products could be negatively impacted. Kodak will vigorously enforce our contractual rights under such circumstances, but there is no guarantee we will be successful in preventing or mitigating the effects of unilateral actions by our suppliers.

Other supplier problems that Kodak could encounter include electronic component shortages, interruption of IT services, risks related to the duration and termination of our contracts with suppliers for components and materials, non-competitive pricing due to tariffs, and risks related to the ability to obtain products, components or services from single source suppliers on favorable terms or at all. Hardware, applications and services, including cloud-based services, that we develop or procure from third-party suppliers may contain defects in design or other problems that could compromise the integrity and availability of our services. The realization of any of these risks, should alternative third-party relationships not be available or established, could cause interruptions in supply or increases in costs which might result in Kodak's inability to meet customer demand for our products, damage to our relationships with our customers, and reduced market share, all of which could adversely affect Kodak's results of operations and financial condition.

Any significant negative change in the payment terms that Kodak has with our suppliers could adversely affect our liquidity. There is a risk that Kodak's key suppliers could respond to any actual or apparent decrease in or any concern with our financial results or liquidity by requiring or conditioning their sale of goods or services to Kodak on more stringent or more costly payment terms, such as by requiring standby letters of credit, earlier or advance payment of invoices, payment upon delivery, or shorter payment terms. Kodak's need for additional liquidity could significantly increase and our supply could be materially disrupted if a significant portion of our key suppliers took one or more of the actions described above, which could have a material adverse effect on our sales, customer satisfaction, cash flows, liquidity and financial position.

Due to the nature of the products we sell and Kodak's worldwide distribution, Kodak is exposed to fluctuations in foreign currency exchange rates, interest rates and commodity costs which, together with tariffs that may be imposed, may adversely impact our results of operations and financial position.

As a result of Kodak's global operating and financing activities, we are exposed to changes in currency exchange rates and interest rates, which may adversely affect our results of operations and financial position.

Exchange rates and interest rates in markets in which we do business tend to be volatile and, at times, our sales and profitability can be negatively impacted across all of our segments depending upon the value of the U.S. dollar and other major currencies such as the euro, the Japanese yen, the British pound and the Chinese yuan. Tariffs or duties may also be imposed on exported products produced by Kodak, making such products less competitive in jurisdictions imposing such tariffs or duties. If the global economic situation remains uncertain or worsens, there could be further volatility in changes in currency exchange rates, interest rates and commodity prices, which could have negative effects on Kodak's business, financial condition and results of operations.

Kodak faces additional costs and risks associated with our worldwide business operations.

Kodak's business is subject to additional costs and risks associated with doing business internationally, such as:

- support of multiple languages;
- recruitment of sales and technical support personnel with the skills to design, manufacture, sell and supply products;
- compliance with governmental regulation of imports and exports, including obtaining required import or export approval for our products;
- complexity of managing international operations;
- exposure to foreign currency exchange rate fluctuations;
- commercial laws and business practices which may favor local competition and the imposition of tariffs on products or raw materials imported into or exported from the U.S.;
- multiple, potentially conflicting, and changing governmental laws, regulations and practices, including differing export, import, tax, anti-corruption, anti-dumping, economic sanction, labor, and employment laws;
- difficulties in collecting accounts receivable;
- limitations or restrictions on the repatriation of cash and the potential obligation to move cash to locations limiting or restricting repatriation;
- limitations or reductions in protection of intellectual property rights;
- complications in logistics and distribution arrangements; and
- political or economic instability.

As a global company, Kodak is subject to regulatory requirements and laws in the jurisdictions in which we operate, and any alleged non-compliance with these requirements or laws could result in an adverse financial or reputational impact.

An inability to provide competitive financing arrangements to Kodak's customers or extension of credit to customers whose creditworthiness deteriorates could adversely impact our revenue, profitability and financial position.

The competitive environment in which Kodak operates may require us to facilitate or provide financing to our customers. Customer financing arrangements may cover all or a portion of the purchase price for our products and services. We may also assist customers in obtaining financing from banks and other sources. Our success may be dependent, in part, upon our ability to provide customer financing on competitive terms and on our customers' creditworthiness. Tightening of credit in the global financial markets can adversely affect the ability of Kodak's customers to obtain financing for significant purchases, which may result in a decrease in, or cancellation of, orders for our products and services. If Kodak is unable to provide competitive financing solutions to our customers or if we extend credit to customers whose creditworthiness deteriorates, our revenues, profitability and financial position could be adversely impacted.

Risks Related to Kodak's Indebtedness and Access to Capital Markets

The Company's substantial monetary obligations require a portion of our cash flow be used to fund other obligations rather than be invested in the business and could adversely affect our ability to fund our operations.

The Company has obligations for borrowed money or in connection with letters of credit under the Term Loan Credit Agreement, the Asset Based Revolving Credit Agreement (the "ABL Credit Agreement"), the cash collateralized Letter of Credit Facility Agreement (the "LC Credit Agreement"), and the 2021 Convertible Notes (together, the "Credit Agreements").

The Company's indebtedness under the Credit Agreements and our other obligations could have important negative consequences to the Company and investors in our securities. These include the following:

- Kodak may not be able to satisfy all of our obligations, including, but not limited to, our obligations under the Credit Agreements, which may cause a cross-default or cross-acceleration on other debt Kodak may have incurred;
- We could have difficulties obtaining necessary financing in the future for working capital, capital expenditures, debt service requirements, collateral requirements, refinancing or other purposes;
- We will have to use a significant part of our cash flow or cash balances to make payments on our debt and Series B Preferred Stock and to satisfy the other obligations set forth above, which may reduce the capital available for operations and expansion; and
- adverse economic or industry conditions may have more of a negative impact.

The Company cannot be sure cash generated from our businesses will be as high as we expect, or our expenses will not be higher than we expect. Because a portion of our expenses are fixed in any given year, our operating cash flow margins are highly dependent on revenues, which are largely driven by customer demand. A lower amount of cash generated from our businesses or higher expenses than expected, when coupled with our debt obligations, could adversely affect Kodak's ability to fund our operations.

The availability of borrowings and letters of credit under the ABL Credit Agreement and LC Credit Agreement is limited by the amount of various types of assets and, under certain circumstances, the administrative agent under the ABL Credit Agreement will have greater control over Kodak's cash.

Availability under the Company's ABL Credit Agreement is based on the amount of Eligible Receivables, Eligible Inventory and Eligible Equipment (as defined in the ABL Credit Agreement) less specified reserves as described in Note 9, "Debt and Finance Leases" to the consolidated financial statements. With the exception of the years ending December 31, 2020 and December 31, 2022, Kodak's U.S. Accounts Receivable and Inventory levels have been declining over the last several years, and Machinery and Equipment for purposes of the ABL Credit Agreement amortizes down by \$1 million per quarter.

Availability under the Company's LC Credit Agreement is based on cash collateral in an amount greater than or equal to 103% of the aggregate amount of letters of credit issued and outstanding at any given time (the "LC Cash Collateral").

If Eligible Receivables, Eligible Inventory and Eligible Machinery and Equipment continue to decline and an asset base cannot be maintained to support the \$58 million of letters of credit outstanding under the ABL Credit Agreement and the \$11.25 million of Excess Availability required under the ABL Credit Agreement, or if LC Cash Collateral is not maintained to support the 103% of the \$43 million of letters of credit outstanding under the LC Credit Agreement, the Company would be required to remain in compliance with the ABL Credit Agreement's Fixed Charge Coverage Ratio and operate under cash dominion by the administrative agent under the ABL Credit Agreement.

Additional LC Cash Collateral would be classified as restricted cash and would not be available to support ongoing working capital and investment needs.

If the administrative agent under the ABL Credit Agreement executed cash dominion, that would increase operational complexities for the Company. An event of default would occur under these circumstances if the Company is unable to remain in compliance with the ABL Credit Agreement's Fixed Charge Coverage Ratio and operate under cash dominion by the administrative agent under the ABL Credit Agreement.

Kodak may desire additional capital funding and such capital may not be available to us and/or may be limited.

Kodak may desire to raise additional capital, including to pursue additional growth opportunities, strategic transactions or additional reorganization initiatives or refinance or redeem outstanding debt or preferred stock. Because of Kodak's current non-investment grade credit rating and financial condition, and/or the current volatility and tightening in the financial and credit markets, Kodak's access to the capital markets may be limited.

Kodak's ability to obtain capital and the costs of such capital are dependent on numerous factors, including:

- Covenants in the Credit Agreements;
- Obtaining a consent from the holders of Series B and C Preferred Stock for the issuance of additional preferred shares which rank senior or *pari passu* to the Series B and C Preferred Stock;
- Investor confidence in Kodak and the markets in which we operate;
- Our financial performance and projected financial performance and the financial performance and projected financial performance of our subsidiaries;
- Our levels of debt and redemption obligations;
- Our ability to generate positive cash flow;
- Our ability to consummate monetization transactions including asset sales;
- Our requirements for posting collateral under various commercial agreements;
- Our current non-investment grade credit rating;
- Our long-term business prospects; and
- General economic and capital market conditions.

Kodak may not be successful in obtaining additional capital for these or other reasons. An inability to access capital may limit our ability to capitalize on growth or efficiency opportunities or refinancings we would otherwise like to pursue.

There can be no assurance the Company will be able to comply with the terms of our various credit facilities.

A breach of any of the financial or other covenants contained in the Credit Agreements, including the Minimum US Liquidity requirements in the ABL Credit Agreement and the LC Credit Agreement, could result in an event of default under these facilities.

The maturity for our 2023 Amended ABL Credit Agreement is June 12, 2024. If we are unable to extend the maturity date or refinance this facility, we would need to have sufficient cash, securities or other collateral to post in place of the letters of credit supported by these facilities. If the 2023 Amended ABL Credit Agreement is not extended or refinanced by February 26, 2024, we may need to address a \$9 million reduction in commitments that would take effect on that date.

If any default or event of default occurs under the LC Credit Agreement or ABL Credit Agreement and the Company is not able to either cure it or obtain a waiver from the requisite lenders under the LC Credit Agreement and ABL Credit Agreement, the administrative agent under the LC Credit Agreement and ABL Credit Agreement may, and at the request of the requisite lenders for that facility must, declare all of the Company's outstanding obligations under the LC Credit Agreement and ABL Credit Agreement, together with accrued interest and fees, to be immediately due and payable. In addition, the agent under the LC Credit Agreement and ABL Credit Agreement may, and at the request of the requisite lenders must, terminate the lenders' commitments under that facility and cease making further loans. If any default or event of default occurs under the Term Loan Credit Agreement or 2021 Convertible Notes and the Company is not able to either cure it or obtain a waiver from the holders of the Term Loan Credit Agreement or 2021 Convertible Notes, such holders may declare all of the Company's outstanding obligations under the Term Loan Credit Agreement and 2021 Convertible Notes, together with accrued interest and fees, to be immediately due and payable. If applicable, the administrative agent under the LC Credit Agreement, ABL Credit Agreement and Term Loan Credit Agreement and the collateral agent for the 2021 Convertible Notes could institute foreclosure proceedings against the pledged assets. Any of these outcomes would likely have an adverse effect on the Company's operations and our ability to satisfy our obligations as they come due.

The current non-investment grade status and Kodak's financial condition may adversely impact Kodak's commercial operations, increase our liquidity requirements and increase the cost of refinancing opportunities. We may not have adequate liquidity to post required amounts of additional collateral.

The Company's corporate family credit rating is currently below investment grade and there are no assurances our credit ratings will improve, or they will not decline, in the future. In addition, the Company may not continue to maintain credit ratings from the recognized rating agencies.

Our credit ratings and financial condition may affect the evaluation of our creditworthiness by trading counterparties and lenders, which could put us at a disadvantage to competitors with higher or investment grade ratings.

In carrying out our commercial business strategy, the current non-investment grade credit ratings have resulted and will likely continue to result in requirements that Kodak either prepay obligations or post significant amounts of collateral to support our business.

Should our ratings continue at their current levels, or should our ratings be further downgraded, we would expect these negative effects to continue and, in the case of a downgrade, become more pronounced. In particular, given the Company's current credit ratings we may be required to post additional collateral to secure workers' compensation-related obligations.

Legal, Regulatory and Compliance Risks

Legal proceedings and governmental investigations associated with the U.S. International Development Finance Corporation announcement or in general could have a material adverse effect on our business operations and prospects, reputation, financial condition, results of operations and stock price.

On July 28, 2020, the U.S. International Development Finance Corporation (the "DFC") announced (the "DFC Announcement") the signing of a non-binding letter of interest to provide a subsidiary of the Company with a potential \$765 million loan (the "DFC Loan") to support the launch of Kodak Pharmaceuticals, an initiative that would manufacture pharmaceutical ingredients for essential generic drugs (the "DFC Pharmaceutical Project").

The DFC Announcement and circumstances surrounding it prompted congressional investigations, an SEC investigation and a New York Attorney General's investigation. In addition, lawsuits have been filed or threatened alleging various securities law violations and breaches of fiduciary duties based on circumstances surrounding the DFC Announcement. For further information on these investigations and lawsuits, see Note 12, "Commitments and Contingencies" in the Notes to Financial Statements.

Legal proceedings in general, and securities and class action litigation and regulatory investigations in particular, can be expensive and disruptive. The investigations and lawsuits associated with the DFC announcement have diverted, and may continue to divert, the attention of Kodak's employees, management and board of directors. In addition, the response to the DFC related investigations and lawsuits has resulted in, and may continue to result in, increased legal expense and related costs. Kodak's insurance, to the extent maintained, is not expected to cover all costs associated with the investigations and legal proceedings. We are unable to predict how much longer the legal proceedings and investigations to which we are currently subject will continue. An unfavorable outcome of any governmental investigation or legal proceeding may have an adverse impact on our reputation, business, financial condition and results of operations, prospects, or stock price.

Failure to comply with anti-corruption laws and regulations, anti-money laundering laws and regulations, economic and trade sanctions, and similar laws could have a materially adverse effect on Kodak's reputation, results of operations or financial condition, or have other adverse consequences.

Regulators worldwide are exercising heightened scrutiny with respect to anti-corruption, economic and trade sanctions, and anti-money laundering laws and regulations. Such heightened scrutiny has resulted in more aggressive investigations and enforcement of such laws and more burdensome regulations, any of which could adversely impact Kodak's business. Kodak has a global operating presence, including in numerous developing economies where companies and government officials are more likely to engage in business practices that are prohibited by domestic and foreign laws and regulations, including the United States Foreign Corrupt Practices Act and the U.K. Bribery Act.

Such laws generally prohibit improper payments or offers of payments to foreign government officials and leaders of political parties, and in some cases, to other persons, for the purpose of obtaining or retaining business. Kodak is also subject to economic and trade sanctions programs, including those administered by the U.S. Treasury Department's Office of Foreign Assets Control, which prohibit or restrict transactions or dealings with specified countries, their governments, and in certain circumstances, their nationals, and with individuals and entities that are specially designated, including narcotics traffickers and terrorists or terrorist organizations, among others. In addition, Kodak is subject to anti-money laundering laws and regulations.

Kodak has implemented policies and procedures to monitor and address compliance with applicable anti-corruption, economic and trade sanctions and anti-money laundering laws and regulations, and Kodak periodically reviews, upgrades and enhances certain of our policies and procedures. However, there can be no assurance that our employees, consultants or agents will not take actions in violation of our policies for which we may be ultimately responsible, or that our policies and procedures will be adequate or will be determined to be adequate by regulators. Any violations of applicable anti-corruption, economic and trade sanctions or anti-money laundering laws or regulations could limit certain of Kodak's business activities until they are satisfactorily remediated and could result in civil and criminal penalties, including fines, which could damage our reputation and have a materially adverse effect on Kodak's results of operation or financial condition.

Failure to comply with privacy, data protection and cyber security laws and regulations could have a materially adverse effect on Kodak's reputation, results of operations or financial condition.

Kodak receives, processes, transmits and stores information relating to identifiable individuals (personal information), both in our role as a technology provider and as an employer. As a result, Kodak is subject to numerous U.S. federal and state and foreign laws and regulations relating to personal information.

These laws have been subject to frequent changes, and new legislation in this area may be enacted at any time. More recent examples of data privacy laws include (but are not limited to) the EU's General Data Protection Regulation ("GDPR") and ePrivacy laws, California's Consumer Privacy Act ("CCPA") and Privacy Rights Act ("CPRA"), China's Personal Information Protection Law ("PIPL"), and Brazil's General Data Protection Law ("LGPD").

Recently enacted laws and regulations, as well as any other change to existing laws, the introduction of new laws and regulations in this area, or the failure to comply with existing laws that are applicable, may subject Kodak to, among other things, additional costs or changes to our business practices, liability for monetary damages, fines and/or criminal prosecution, unfavorable publicity, restrictions on our ability to obtain and process information and allegations by our customers and clients that we have not performed our contractual obligations.

Recent developments in the regulation of cross-border data transfers from the European Economic Area and countries with similar regimes, including enforcement decisions and regulatory guidance issued by key supervisory authorities, creates uncertainty as to our and our customers' ability to use platforms and processing services located in the U.S. and other non-adequate jurisdictions. While existing data transfer mechanisms, such as Standard Contractual Clauses, remain valid, Kodak's use of these transfer mechanisms is subject to legal, regulatory and political pressure. Kodak anticipates spending additional time and expense to enable continued cross-border transfers as needed to operate our business, which may have a material adverse effect on our business and results of operations.

This environment demands Kodak continuously improve our design and coordination of security controls and contractual arrangements across our businesses and geographies. While Kodak has taken steps to comply with the GDPR, other applicable data protection laws, and the regulations and guidance published by applicable regulators, our efforts to achieve and remain in compliance may not be fully successful. Despite Kodak's security controls over personal data, Kodak, may not prevent the improper disclosure of personal information. Improper disclosure of this information could harm our reputation or subject us to liability under laws which protect personal data, resulting in increased costs or loss of revenue.

Kodak is subject to environmental laws and regulations. Failure to comply with such laws and regulations or liabilities imposed as a result of such laws and regulations could have an adverse effect on our business, results of operations and financial condition.

Kodak is subject to environmental laws and regulations world-wide that govern, for example, the discharge of pollutants, the management of hazardous materials, the cleanup of contaminated sites, and the composition and end-of-life management of our products. Changes to such laws and regulations could limit the sale of certain of our products in certain jurisdictions or require modifications to our products that may be costly, time consuming or infeasible.

Non-compliance with applicable laws or liability incurred without regard to fault could have a material adverse effect on our business, results of operations and financial condition. The cost of complying with such laws could have a material adverse effect on our business, results of operations and financial condition. Any uncertainties related to environmental conditions or obligations at Kodak's properties may impact our ability to further develop or sell such properties.

If Kodak fails to maintain effective internal controls over financial reporting, we may not be able to accurately report our financial results, which could have a material adverse effect on Kodak's operations, investor confidence in our business and the trading prices of our securities.

Kodak is required to maintain disclosure controls and procedures and internal controls over financial reporting that are effective for the purposes described in Item 9A, "Controls and Procedures". The existence of a material weakness in Kodak's internal controls may adversely affect our ability to record, process, summarize and report financial information timely and accurately and, as a result, our financial statements may contain material misstatements or omissions, which could result in regulatory scrutiny, cause investors to lose confidence in our reported financial condition and otherwise have a material adverse effect on Kodak's business, financial condition, cash flow results of operations or the trading price of Kodak's stock.

Kodak may have additional tax liabilities.

Kodak is subject to income and other taxes in the United States and many other countries, and we are subject to routine corporate income tax audits in these jurisdictions. We believe that the positions taken on our tax returns are fully supported, but tax authorities may challenge these positions, and our positions may not be fully sustained on examination by the relevant tax authorities. We regularly assess the likely outcomes of these audits in order to determine the appropriateness of our tax provision, and we believe we have provided adequate reserves for all tax deficiencies or reductions in tax benefits that could reasonably result from an audit. We adjust our uncertain tax positions to reflect the impact of negotiations, settlements, rulings, advice of legal counsel, and other information and events pertaining to a particular audit. Determining the appropriate provision for potential deficiencies or reductions in tax benefits that could reasonably result from an audit requires management judgments and estimates, and income tax audits are inherently unpredictable. We may not accurately predict the outcomes of these audits, and the amounts ultimately paid upon resolution of audits could be materially different from the amounts previously included in our income tax provision and, therefore, could have a material impact on our income tax provision, net income and cash flows.

Kodak's future pension and other postretirement benefit plan costs and required level of contributions could be unfavorably impacted by changes in actuarial assumptions, market performance of plan assets and obligations imposed by legislation or pension authorities which could adversely affect our financial position, results of operations, and cash flow.

Kodak has significant defined benefit pension and other postretirement benefit obligations.

The funded status of our U.S. and non-U.S. defined benefit pension plans (and other postretirement benefit plans), and the related cost reflected in our financial statements, are affected by various factors subject to an inherent degree of uncertainty. Key assumptions used to value these benefit obligations, funded status and expense recognition include the discount rate for future payment obligations, the long term expected rate of return on plan assets, salary growth, mortality trends, and other economic and demographic factors. Significant differences in actual experience, or significant changes in future assumptions or obligations imposed by legislation or pension authorities, could lead to a potential future need to contribute cash or assets to Kodak's plans in excess of currently estimated contributions and benefit payments and could have an adverse effect on Kodak's consolidated results of operations, financial position or liquidity.

In past years, Kodak has experienced variability in the costs of these defined benefit pension and postretirement benefit obligations as a result of macro-economic factors beyond our control, including variability in investment returns on pension plan assets, and changes in discount rates and mortality rates used to calculate pension and related liabilities. At least some of these macro-economic factors may again put pressure on the cost of providing pension and benefits. There can be no assurance we will succeed in limiting cost increases.

Kodak may be required to recognize impairments in the value of our goodwill and/or other long-lived assets which could adversely affect our results of operations.

Kodak tests goodwill and indefinite lived intangible assets for impairment annually or whenever events occur or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. Kodak evaluates other long-lived assets for impairments whenever events or changes in circumstances indicate the carrying value may not be recoverable. Impairments could occur in the future if Kodak's expected future cash flows or market capitalization decline, market or interest rate environments deteriorate, or if carrying values change materially compared with changes in their respective fair values.

Risks Related to the Company's Common Stock

The conversion of the Series B Preferred Stock, Series C Preferred Stock and 2021 Convertible Notes into shares of the Company's common stock may dilute the value for the current holders of the Company's common stock.

The 1,000,000 outstanding shares of the Company's Series B Preferred Stock are convertible into shares of the Company's common stock at a conversion rate of 9.5238 shares of common stock per share of Series B Preferred Stock, the 1,096,797 outstanding shares of the Company's Series C Preferred Stock are convertible into shares of the Company's common stock at a conversion rate of 10 shares of common stock per share of Series C Preferred Stock, and the 2021 Convertible Notes are convertible into shares of the Company's common stock at a conversion rate of 100 shares of common stock per \$1,000 principal amount of 2021 Convertible Notes. The outstanding shares of Series C Preferred Stock and outstanding principal amount of the 2021 Convertible Notes are expected to increase as a result of the payment of dividends and interest in kind at a rate of 5.0% per annum. As a result of the conversion of any issued and outstanding Series B Preferred Stock, Series C Preferred Stock or 2021 Convertible Notes (collectively, the "Convertible Securities"), the Company's existing shareholders will own a smaller percentage of our outstanding common stock. Based on the capitalization of the Company as of December 31, 2022, the conversion of all Convertible Securities would result in the issuance to holders thereof of approximately 23% of the outstanding common stock after giving effect to such conversion. Further, additional shares of common stock may be issuable pursuant to certain other features of the Convertible Securities, with such issuances being further dilutive to existing holders of common stock.

If Convertible Securities are converted into common stock, holders of such converted common stock will be entitled to the same dividend and distribution rights as holders of the common stock currently authorized and outstanding. As such, another dilutive effect resulting from the conversion of any issued and outstanding Convertible Securities will be a dilution to dividends and distributions.

Holders of the Company's common stock will not realize any dilution in their ownership, dividend or distribution rights solely as a result of the reservation of any shares of common stock for issuance upon conversion of the Convertible Securities or for issuance of additional shares of common stock pursuant to certain other features of the Convertible Securities, but will experience such dilution to the extent additional shares of common stock are issued in the future as described above.

The holder of the Series C Preferred Stock owns a large portion of the voting power of the Company's outstanding securities, and the holders of the Series C Preferred Stock and 2021 Convertible Notes each have the right to nominate one member for election to the Company's Board. As a result, these holders may influence the composition of the Board and future actions taken by the Board.

The holder of the Company's Series C Preferred Stock is entitled to vote upon all matters upon which holders of the Company's common stock have the right to vote and is entitled to the number of votes equal to the number of full shares of common stock into which such shares of Series C Preferred Stock could be converted at the then applicable conversion rate.

The holder of the Series C Preferred Stock holds approximately 12% of the voting power of the Company on an as-converted basis. As a result, this holder may have the ability to influence future actions by the Company requiring shareholder approval.

The holder of the Series C Preferred Stock also has the right to nominate one member for election to the Company's board of directors (the "Board"). This nomination right expires upon the earlier to occur of the third anniversary of the initial issuance of the Series C Preferred Stock or the holder ceasing to directly or indirectly hold at least a majority of the shares of Series C Preferred Stock purchased or the common stock received upon the conversion of such shares and is exclusive to the initial holder and does not transfer with the Series C Preferred Stock.

Also, an affiliate of the Term Loan Lenders has the right to nominate one member for election to the Board until the third anniversary of the initial issuance of the Term Loans or until the Term Loan Lenders cease to hold at least 50% of the original principal amount of the Term Loans and commitments under the Credit Agreement, whichever is earlier. Until the Term Loan Lenders cease to hold at least 50% of the original principal amount of the Term Loans and commitments under the Credit Agreement, at any time that the director nominated by the affiliate of the Term Loan Lenders is not serving on the Board, such affiliate will have the right to designate a non-voting observer to the Board.

Also, if dividends on the Series B Preferred Stock are in arrears for six or more consecutive or non-consecutive dividend periods, the holders of the Series B Preferred Stock will be entitled to nominate one director at the next annual shareholder meeting and all subsequent shareholder meetings until all accumulated dividends on the Series B Preferred Stock have been paid or set aside. As a result, the presence of directors on the Board nominated by the current holder of Series C Preferred Stock or an affiliate of the Term Loan Lenders or nominated in the future by the holders of Series B Preferred Stock would enable such holders and lenders to influence the composition of the Board and, in turn, potentially influence and impact future actions taken by the Board.

The Company has registered, and has a duty to register, the resale of a large portion of our outstanding securities. The resale of the Company's common stock, or the perception that such resale may occur, may adversely affect the price of our common stock.

In compliance with certain agreements to which the Company is a party, we have registered the resale of an aggregate of up to 44,490,032 shares of common stock that are either outstanding or issuable upon conversion of Preferred Stock or convertible notes. The resale of a substantial number of shares of common stock in the public market, or the perception that such resale might occur, could cause the market price of the Company's common stock to decline. Under the terms of the certain agreements to which the Company is subject, certain of the counterparties to such agreements can, in certain circumstances, require the Company to participate in an underwritten public offering of the registered securities. Any shares sold in a registered resale will be freely tradable without restriction under the Securities Act. While the Company cannot predict the size of future resales or distributions of our common stock, if there is a perception that such resales or distributions could occur, or if the holders of the Company's securities registered for resale sell a large number of the registered securities, the market price for the Company's common stock could be adversely affected.

The resale of a significant portion of the Company's securities or certain accumulations or transfers of the Company's securities could result in a change of control of the Company and the loss of favorable tax attributes.

Holders of the Convertible Securities and holders of large blocks of the Company's common stock collectively have a significant influence over matters presented to the Company's shareholders for approval, including election of members to the Board and change of control transactions. In addition, the holders of such securities collectively would be able to cause a significant change in the ownership of the Company by selling a sufficient portion of the Company's securities held by them. If such a transaction, in combination with other transactions in securities of the Company which have already occurred or future issuances of securities by the Company, were to result in an "ownership change" as determined under Section 382 of the Internal Revenue Code of 1986, as amended, then the Company's ability to offset taxable income with tax attributes generated prior to the ownership change date could be limited, possibly substantially. Certain accumulations or transfers of the Company's outstanding securities not involving these holders, could also cause such an "ownership change". For more information on the Company's tax attributes refer to Note 18, "Income Taxes". The interests of the holders of the Convertible Securities and holders of large blocks of the Company's common stock may not always coincide with the interests of the other holders of our common stock.

The Company's stock price has been and may continue to be volatile.

The market price of the Company's common stock experienced extreme volatility in the context of the DFC Announcement and has declined significantly since that time. Future announcements or disclosures concerning the Company, our strategic initiatives, our sales and profitability, quarterly variations in actual or anticipated operating results or comparable sales, any failure to meet analysts' expectations, sales of large blocks of our common stock and developments concerning the investigations, lawsuits and claims relating to the DFC Announcement, among other factors, could cause the market price of our common stock to fluctuate substantially.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Kodak's worldwide headquarters is located in Rochester, New York.

Kodak owns 11 million square feet and leases, as a lessee, approximately 4 million square feet of space that includes administrative, research and development, manufacturing and marketing facilities in several worldwide locations. Out of the owned space, Kodak leases out approximately 1 million square feet to third-party tenants. The leases are for various periods and are generally renewable.

Kodak's principal manufacturing facilities, by segment, are listed below. Properties in a location may be shared by all segments operating in that location.

<i>Digital Printing</i>	<i>Traditional Printing</i>	<i>Advanced Materials and Chemicals</i>
Rochester, New York, USA	Rochester, New York, USA	Rochester, New York, USA
Dayton, Ohio, USA	Columbus, Georgia, USA	Xiamen, China
Vancouver, Canada	Osterode, Germany	Vancouver, Canada
(software development)	Gunma, Japan	
Shanghai, China	Shanghai, China	
(software development)	Vancouver, Canada	

Regional distribution centers are located in various places within and outside of the United States.

Research and development is headquartered at the Kodak Research Laboratories which is part of the Eastman Business Park in Rochester, New York, where Kodak conducts research and files patent applications for fundamental inventions. Eastman Business Park is a more than 1,200-acre innovation and manufacturing hub, which features a comprehensive set of technology, transportation and utility infrastructure assets. The complex features an on-site rail and wastewater treatment facility and manufacturing, distribution, lab and office space. Kodak uses and leases out space at Eastman Business Park as part of its strategy of adaptive and effective reuse of infrastructure, services, buildings and land.

Other U.S. research and development groups are located in Dayton, Ohio and Columbus, Georgia. Outside the U.S., research and development groups are located in Canada, Israel, Germany, Japan and China. The research and development groups work in close cooperation with manufacturing units and marketing organizations to develop new products and applications to serve both existing and new markets.

Kodak has excess capacity in some locations. Kodak is pursuing the monetization of its excess capacity by selling or leasing the associated properties.

ITEM 3. LEGAL PROCEEDINGS

See Note 12, "Commitments and Contingencies" in the Notes to the Financial Statements included in Part II, Item 8, "Financial Statements and Supplementary Data" for information regarding certain legal proceedings in which Kodak is involved.

ITEM 4. MINE SAFETY DISCLOSURES

None.

INFORMATION ABOUT OUR EXECUTIVE OFFICERS

Pursuant to General Instructions G (3) of Form 10-K, the following list is included as an unnumbered item in Part I of this report in lieu of being included in the Proxy Statement for the Annual Meeting of Shareholders.

Name	Age	Positions Held
James V. Continenza	60	Executive Chairman and Chief Executive Officer Chief Financial Officer, Senior Vice President and President of Eastman Business Park
David E. Bullwinkle	48	General Counsel, Secretary and Senior Vice President
Roger W. Byrd	57	Chief Accounting Officer and Corporate Controller
Richard T. Michaels	49	Chief Technical Officer, Vice President, Senior Vice President Advanced Materials and Chemicals
Terry R. Taber	68	

The executive officers' biographies follow:

James V. Continenza

James V. Continenza leads the transformation of Kodak as Executive Chairman and Chief Executive Officer. He was appointed by the Board as Executive Chairman in February 2019 and as Chief Executive Officer in July 2020. Continenza joined the Board of Kodak in April 2013 and became Chairman of the Board in September 2013. Continenza served as the Chairman and Chief Executive Officer of Vivial Inc., a privately held marketing technology and communications company from September 2012 through June 2021, and served as Chairman and Chief Executive Officer of Vivial Media LLC, a portion of Vivial Inc. remaining after a partial sale, from June 2021 to January 2022. He has also held leadership roles at STi Prepaid, LLC, a telecommunications company; Anchor Glass Container Corp., a leading manufacturer of glass containers; Teligent, Inc., a provider of communications services including voice, data, and internet access; Lucent Technologies Product Finance, a global leader in telecom equipment; and AT&T Inc., a telecommunications company.

In addition to his management experience, Continenza serves and has served on the boards of directors of a number of public and private companies. Continenza served on the board of directors of NII Holdings, Inc. (Nasdaq: NIHD), the holding company for Nextel Brazil, a wireless communication services provider, from August 2015 to August 2019. Among other private company boards, Continenza currently serves on the board of directors of Wildcat Discovery Technologies, Inc. ("Wildcat"), a private technology company that uses proprietary methods to research and develop new battery materials. Continenza was appointed to the board of Wildcat as the Company's designee in connection with the Company's purchase of preferred securities of Wildcat.

Previously, Continenza served on the boards of directors of Datasite LLC (formerly known as Merrill Corporation) from July 2013 to December 2020 and Cenveo Corporation, an industry leader in transformative publishing solutions, from September 2018 to September 2022.

David E. Bullwinkle

Dave Bullwinkle has been the Chief Financial Officer and Senior Vice President of Kodak since July 2016 and the President of Eastman Business Park since November 2018. Bullwinkle is responsible for advancing the growth strategy for Eastman Business Park and leading Kodak's worldwide treasury, internal audit, controller and tax teams. Bullwinkle joined Kodak in 2004 and has worked in several financial management roles at Kodak including Worldwide BU Controller, Assistant Corporate Controller and External Reporting Manager. He served as the Director of Corporate Financial Planning and Analysis and Vice President, Finance at Kodak from November 2010 to June 2016, and Director of Investor Relations from August 2013 to June 2016.

Prior to joining Kodak, Bullwinkle worked as the Manager of Financial Reporting at Birds Eye Foods, Inc. and previously at PricewaterhouseCoopers from 1996 to 2002 in various roles including serving as an Assurance Manager. Bullwinkle is a Certified Public Accountant in the State of New York.

Roger W. Byrd

Roger Byrd was appointed General Counsel, Secretary and Senior Vice President of Kodak in January 2019. He is responsible for leading the Company's global legal function and for providing legal guidance to senior leadership and the Board of Directors. Byrd also supports the Company with credit agreement compliance, securities reporting, corporate governance, M&A and financing transactions, joint ventures, and other strategic initiatives. Byrd joined Kodak in 2015 as Assistant General Counsel and Vice President, Legal Department.

Prior to joining Kodak, Byrd was a Partner at Nixon Peabody LLP. During his 23-year career at Nixon Peabody, he represented a broad range of clients in connection with a variety of M&A, financing and other corporate transactions. Byrd also served as General Counsel at Choice One Communications, Inc., a competitive local exchange carrier from 2005 – 2006.

Richard T. Michaels

Richard Michaels was appointed Chief Accounting Officer and Corporate Controller of Kodak in April 2021. From 2011 until April 2021 Michaels served as the Kodak's Assistant Corporate Controller. Michaels joined Kodak in 2004 as Controller for the Graphics Communications Group and held several other controller positions at the Company prior to becoming the Assistant Corporate Controller.

Prior to joining Kodak, Michaels held various positions at PricewaterhouseCoopers from 1995 to 2004. Michaels is a Certified Public Accountant in the State of New York.

Terry R. Taber, PhD

Terry Taber has served as Kodak's Chief Technical Officer since January 2009. Effective January 2020, he is a Senior Vice President of Advanced Materials and Chemicals.

From May 1, 2017 to January 2020, Taber was named President of the Advanced Materials and 3D Printing Technology Division, which contained the research laboratories and included licensing as well as new business development activities related to Kodak's patents and proprietary technology, and focused on opportunities in smart material applications, printed electronics markets and 3D printing materials.

From January 1, 2015 to May 1, 2017, Taber was President of the Intellectual Property Solutions Division. From January 2007 to December 2008 he was the Chief Operating Officer of Kodak's Image Sensor Solutions ("ISS") business, a leading developer of advanced CCD and CMOS sensors serving imaging and industrial markets. Prior to Taber's role with ISS, he held a series of senior positions in Kodak's research and development and product organizations. Taber has served as a corporate vice president since December 2008, including as a senior vice president from December 2010 through February 2020.

During his more than 40 years at Kodak, Taber has been involved in new materials research, product development and commercialization, manufacturing, and executive positions in R&D and business management.

Taber's early responsibilities included research on new synthetic materials, an area in which he holds several patents, program manager for several film products, worldwide consumer film business product manager, Associate Director of R&D and Director of Materials & Media R&D.

In past board service, he was a founding Board Member of the Innovation & Material Sciences Institute and served on the Executive Advisory Board of FIRST Rochester (For Inspiration and Recognition of Science and Technology). Taber currently serves on the George Eastman Museum Board, effective June 2018. He also serves on the Executive Committee of the Greater Rochester Chamber of Commerce and on the Board of Trustees for Roberts Wesleyan College and Northeastern Seminary.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

The Company's common stock is listed on the New York Stock Exchange (NYSE) under the symbol "KODK".

There were 770 shareholders of record of common stock on December 31, 2022.

Information regarding securities authorized for issuance under equity compensation plans is included in Item 12. "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" in this Annual Report under the caption "Equity Compensation Plan Information."

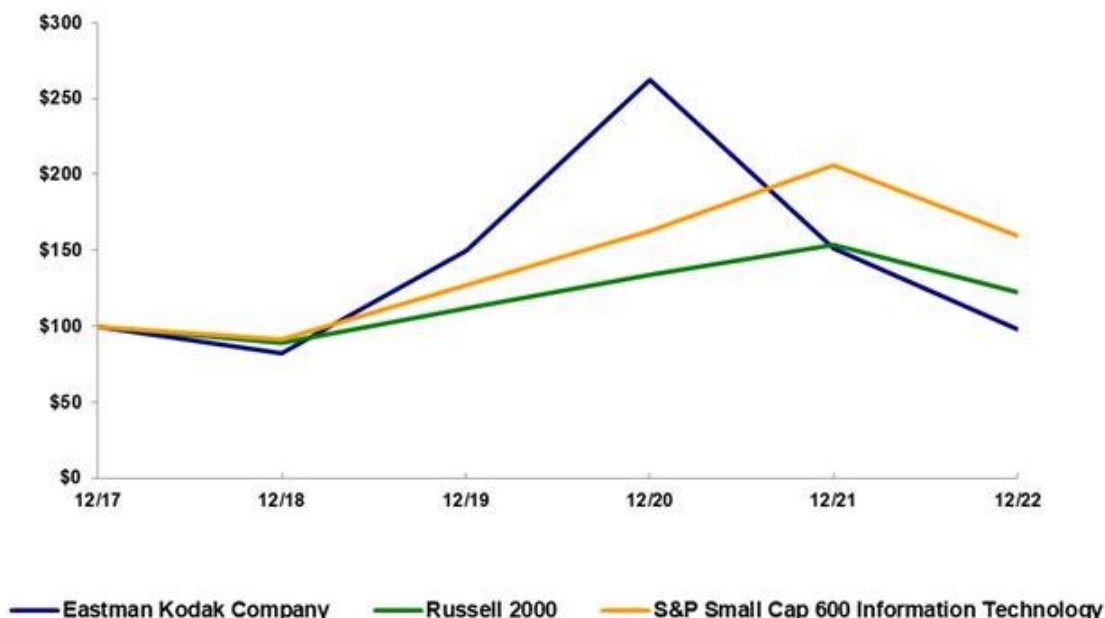
DIVIDEND INFORMATION

No dividends on common stock were declared or paid during 2022 or 2021.

Dividends for common shareholders may be restricted under Kodak's Term Loan Credit Agreement, Amended ABL Credit Agreement, Letter of Credit Facility Agreement, the Series B Preferred Stock Agreement and the Series C Preferred Stock Agreement.

The graph below matches Eastman Kodak Company's cumulative 5-Year total shareholder return on common stock with the cumulative total returns of the Russell 2000 index and the S&P Small Cap 600 Information Technology index. The graph tracks the performance of a \$100 investment in our common stock and in each index (with the reinvestment of all dividends) from 12/31/2017 to 12/31/2022.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN*
Among Eastman Kodak Company, the Russell 2000 Index,
and S&P Small Cap 600 Information Technology



*\$100 invested on 12/31/17 in stock or index, including reinvestment of dividends.
Fiscal year ending December 31.

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ISSUER PURCHASES OF EQUITY SECURITIES DURING THE QUARTER ENDED DECEMBER 31, 2022

There were no issuer purchases of equity securities in the quarter ended December 31, 2022.

ITEM 6. RESERVED

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

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to help the reader understand the results of operations and financial condition of Kodak and should be read in conjunction with the consolidated financial statements and notes thereto included in Part II, Item 8. "Financial Statements and Supplementary Data" ("Item 8") of this Annual Report on Form 10-K. All references to Notes relate to Notes to the Financial Statements in Item 8.

CAUTIONARY STATEMENT PURSUANT TO SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

This report on Form 10-K includes "forward-looking statements" as that term is defined under the Private Securities Litigation Reform Act of 1995.

Forward-looking statements include statements concerning Kodak's plans, objectives, goals, strategies, future events, future revenue or performance, capital expenditures, liquidity, investments, financing needs and business trends and other information that is not historical information. When used in this document, the words "estimates," "expects," "anticipates," "projects," "plans," "intends," "believes," "predicts," "forecasts," "strategy," "continues," "goals," "targets" or future or conditional verbs, such as "will," "should," "could," or "may," and similar words and expressions, as well as statements that do not relate strictly to historical or current facts, are intended to identify forward-looking statements. All forward-looking statements, including management's examination of historical operating trends and data, are based upon Kodak's current expectations and assumptions. Forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results to differ materially from historical results or those expressed in or implied by such forward-looking statements. Important factors that could cause actual events or results to differ materially from the forward-looking statements include, among others, the risks and uncertainties described in more detail in this report on Form 10-K under the headings "Business," "Risk Factors," "Legal Proceedings" and/or "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources," and in other filings the Company makes with the SEC from time to time, as well as the following:

- Continued sufficient availability of borrowings and letters of credit under the Amended ABL Credit Agreement and L/C Facility Agreement, Kodak's ability to obtain additional or alternate financing if and as needed, Kodak's continued ability to manage world-wide cash through inter-company loans, distributions and other mechanisms, and Kodak's ability to provide or facilitate financing for its customers;
- Kodak's ability to improve and sustain its operating structure, cash flow, profitability and other financial results;
- Kodak's ability to achieve strategic objectives, cash forecasts, financial projections, and projected growth;
- Kodak's ability to achieve the financial and operational results contained in its business plans;
- Kodak's ability to comply with the covenants in its various credit facilities;
- Kodak's ability to fund continued investments, capital needs, collateral requirements and restructuring payments and service its debt and Series B Preferred Stock and Series C Preferred Stock;
- Changes in foreign currency exchange rates, commodity prices, interest rates and tariff rates;

- The impact of the global economic environment, including inflationary pressures, medical epidemics such as the COVID-19 pandemic, geopolitical issues such as the war in Ukraine, and Kodak's ability to effectively mitigate the associated increased costs of aluminum and other raw materials, energy, labor, shipping, delays in shipment and production times, and fluctuations in demand;
- The performance by third parties of their obligations to supply products, components or services to Kodak and Kodak's ability to address supply chain disruptions and continue to obtain raw materials and components available from single or limited sources of supply, which may be adversely affected by the COVID-19 pandemic and the war in Ukraine;
- Kodak's ability to effectively anticipate technology and industry trends and develop and market new products, solutions and technologies, including products based on its technology and expertise that relate to industries in which it does not currently conduct material business;
- Kodak's ability to effectively compete with large, well-financed industry participants;
- Kodak's ability to effect strategic transactions, such as investments, acquisitions, strategic alliances, divestitures and similar transactions, or to achieve the benefits sought to be achieved from such strategic transactions;
- Kodak's ability to discontinue, sell or spin-off certain non-core businesses or operations, or otherwise monetize assets;
- The impact of the investigations, litigation and claims arising out of the circumstances surrounding the announcement on July 28, 2020, by the U.S. International Development Finance Corporation of the signing of a non-binding letter of interest to provide a subsidiary of Kodak with a potential loan to support the launch of an initiative for the manufacture of pharmaceutical ingredients for essential generic drugs; and
- The potential impact of force majeure events, cyber-attacks or other data security incidents that could disrupt or otherwise harm Kodak's operations.

Future events and other factors may cause Kodak's actual results to differ materially from the forward-looking statements. All forward-looking statements attributable to Kodak or persons acting on its behalf apply only as of the date of this report on Form 10-K and are expressly qualified in their entirety by the cautionary statements included in this document. Kodak undertakes no obligation to update or revise forward-looking statements to reflect events or circumstances that arise after the date made or to reflect the occurrence of unanticipated events, except as required by law.

The following Management's Discussion and Analysis ("MD&A") provides a historical and prospective narrative on the Company's financial condition and results of operations for the year ended December 31, 2022 as compared to the year ended December 31, 2021. Cross references to Notes in this MD&A are to the Notes in the Financial Statements included in Part II, Item 8, "Financial Statements and Supplementary Data". The discussion of the Company's financial condition and results of operations for the year ended December 31, 2021 compared to the same period in 2020 is included in Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations in the Company's Annual Report on Form 10-K for the year ended December 31, 2021.

EXECUTIVE OVERVIEW

Consolidated revenues in the year ended December 31, 2022 were \$1.205 billion, an improvement of \$55 million (5%) from 2021. Currency impacted revenue unfavorably in 2022 compared to 2021 (\$70 million).

Traditional Printing's revenues, which accounted for 59% of Kodak's total revenues in 2022, improved by \$52 million (8%) compared to 2021. Volume for SONORA Process Free Plates improved by 2% compared to the prior year period or 9% when including volume under a licensing agreement pursuant to which Kodak received approximately \$1 million in royalties in 2022. Digital Printing revenues declined \$22 million (9%) and Advanced Materials and Chemicals revenue improved \$22 million (10%) from 2021 to 2022.

Impact of COVID-19 and Other Global Events:

Kodak's products are sold and serviced in numerous countries across the globe with more than half of sales generated outside the U.S. Current global economic conditions remain highly volatile due to the ongoing impacts from the COVID-19 pandemic, heightened levels of inflation, unfavorable foreign exchange rates, the war in Ukraine, and other global events which impacted Kodak's operations. Kodak is experiencing supply chain disruptions, shortages in materials and labor, and increased labor, material and distribution costs as well as volume declines for certain businesses.

Kodak has implemented numerous measures to mitigate the challenges associated with supply chain disruptions and shortages in materials, including increasing safety stock on certain materials, increasing lead-times, providing suppliers with longer forecasts of future demand and certifying additional sources or substitute materials where possible. These measures have enabled Kodak to largely meet current demand.

The Advanced Materials and Chemicals segment has also experienced labor shortages in certain manufacturing areas. Increased demand for consumer film products along with manufacturing equipment limitations and labor shortages have contributed to increased backorders. Kodak has increased headcount in this segment to better meet demand, but supply will continue to be constrained by manufacturing equipment limitations without further capital improvements.

Kodak has implemented various pricing actions in response to increased labor, material and distribution costs primarily within its Traditional Printing segment. In order to mitigate the impact of higher aluminum, energy and packaging costs, the segment implemented surcharges on purchases of plates largely beginning in the latter part of the second quarter of 2021 that continue to be periodically reviewed and adjusted for accordingly.

Due to current global economic conditions and pricing actions, the Traditional Printing segment is experiencing a slowdown in customer demand that negatively impacted volume in 2022. Kodak has implemented various actions in response, including supply chain and workforce optimization, productivity improvements and other cost savings that are projected to mitigate the impact of lower volumes. However, the potential worsening of economic conditions and the negative impact on customer demand due to further pricing actions could unfavorably impact this segment's operating results.

Kodak continues to work closely with government and health officials in the jurisdictions where it operates to protect employees worldwide, with particular measures in place for those working in plants and distribution facilities. Kodak closed its manufacturing facility located in Shanghai, China in April 2022 in response to a mandatory government lockdown. The mandatory government lockdown ended on June 1, 2022 and Kodak's Shanghai, China manufacturing facility has resumed operations. The temporary closure did not have a material impact on Kodak's financial statements. None of Kodak's other manufacturing facilities have been ordered to close by governmental authorities.

Kodak also continues to monitor the rapidly evolving events surrounding the war in Ukraine and the various sanctions imposed in response to the war. Kodak is in compliance with all sanctions. Kodak is experiencing worldwide supply constraints for aluminum and electronic components, and increased energy and transportation costs due in part to the war in Ukraine. The extent to which the military conflict in Ukraine will impact the global economy and Kodak's business and operations remains uncertain.

The war in Ukraine and the international response have disrupted Kodak's ability to operate its Russian subsidiary in the ordinary course, affecting its ability to pay vendors and employees, receive amounts owed from customers in Russia and deliver product. Kodak is in the process of an orderly winding down of its Russian subsidiary and direct Russian operations. The direct operations of Kodak's Russian subsidiary are not material to the Company's financial statements (less than 1% of total consolidated revenues and assets for 2021 and 2022), and there were no material impacts to the consolidated results as of and for the year ended December 31, 2022.

The ongoing impact of the COVID-19 pandemic, the war in Ukraine, changes in global economic conditions and other global events on Kodak's operations and financial performance remains uncertain and will depend on several factors such as the duration of supply chain disruptions and slowdown in customer demand, the ability to secure raw materials and components, the ability to offset higher labor, material and distribution costs through pricing actions and the duration and further evolution of the COVID-19 pandemic and governmental responses thereto.

Business Overview and Strategy:

Segments within the print industry and the film industry face competition from digital substitution. Kodak's strategy is to:

- Focus product investment in core competency areas of print, advanced materials and chemicals, leveraging Kodak's proprietary technologies to deliver technologically advanced products in the product goods packaging, graphic communications and functional printing markets;
- Grow revenues through a focus on customers across Kodak's print divisions, increasing overall share and profitability;
- Promote the use of film and expand the applications of Kodak's film and chemicals to best utilize the existing infrastructure; and
- Continue to streamline processes to drive cost reductions and improve operating leverage.

A discussion of opportunities and challenges related to Kodak's strategy follows:

- Traditional Printing's digital plate products include traditional digital plates and KODAK SONORA Process Free Plates. SONORA Process Free Plates allow Kodak customers to skip the plate processing step prior to mounting plates on a printing press. This improvement in the printing process is intended to save time and costs for customers. Also, SONORA Process Free Plates reduce the environmental impact of the printing process because they eliminate the use of chemicals (including solvents), water and power that is otherwise required to process a traditional plate. The segment is experiencing challenges from higher prices and availability of raw materials, digital substitution and competitive pricing pressures. Kodak seeks to mitigate the impact of increases in manufacturing costs, including aluminum prices, through a combination of surcharges and price increases, improved production efficiency and cost reduction initiatives. In addition, Kodak seeks to offset the impact of short-term and long-term market dynamics on pricing and volume pressures through innovations in Kodak product lines, including investing in digital print technologies.

- In Digital Printing, the PROSPER business is expected to grow as the legacy VERSAMARK business continues to decline as a percentage of the segment's total revenue. The Prosper Inkjet Systems business is expected to continue to build profitability. Kodak launched the PROSPER 7000 Turbo Press in June 2022. The PROSPER 7000 Turbo Press enables commercial, publishing and newspaper printers to compete more effectively with offset and to shift more long run jobs from conventional printing processes to inkjet. Investment in the next generation technology, ULTRASTREAM, is focused on the ability to place ULTRASTREAM writing systems in Kodak branded presses and in various original equipment manufacturers in applications ranging from commercial print to packaging. The first flexible packaging printing system utilizing Kodak's ULTRASTREAM inkjet technology was placed during the second quarter of 2022. In addition, Kodak officially launched the KODAK PROSPER ULTRA 520 Digital Press utilizing Kodak's ULTRASTREAM inkjet technology, which offers offset print quality in a smaller footprint.
- Advanced Materials and Chemicals segment is using Kodak's deep expertise in chemistry and strengths in deposition and coating processes that come from decades of experience in film manufacturing to work on new initiatives:
 - o EV/Energy Storage Battery Material Manufacturing - Coating of substrates is a critical aspect of manufacturing materials for batteries and Kodak plans to capitalize on its expertise in coating technology to develop opportunities in this area. Kodak is currently in the process of expanding its pilot coating facility. On July 13, 2022, Kodak invested \$25 million to acquire a minority preferred equity interest in Wildcat Discovery Technologies, Inc. ("Wildcat"), a private technology company that uses proprietary methods to research and develop new battery materials, including an EV battery. Kodak has also entered into an agreement to provide coating and engineering services in collaboration with Wildcat to develop and scale film coating technologies. Wildcat has granted Kodak certain rights to negotiate a production or licensing arrangement with Wildcat when and if Wildcat's technology reaches commercial readiness.
 - o Light-Blocking Technology - Kodak plans to leverage a proprietary technology initially developed for electrophotographic toners to commercialize a carbon-less fabric coating designed to offer superior light management, from complete blackout to selective light filtering, and coating compatibility with an unmatched range of fabrics. Kodak is installing and commissioning a production-scale coating machine to coat fabrics in Eastman Business Park, located in Rochester, NY.
 - o Transparent Antennas - Kodak plans to leverage its proprietary copper micro-wire technologies and high-resolution printing expertise to contract-manufacture custom transparent antennas for automotive, commercial construction, and other applications requiring excellent radio frequency ("RF") and optical performance. The integration of antennas is growing worldwide due to the rapid expansion of 5G and an overall increase in RF communications, and the ubiquity of glass surfaces makes transparent antennas attractive for multiple end-use markets.
 - o Reagent Manufacturing - Kodak plans to capitalize on its existing chemical manufacturing expertise, including current production of unregulated Key Starting Materials for pharmaceuticals, to implement an expansion into manufacturing Diagnostic Test Reagent solutions. Kodak has started construction of a lab and manufacturing facility to manufacture reagents for healthcare applications within an existing building located at Eastman Business Park.
- Film and related component manufacturing operations and Kodak Research Laboratories utilize capacity at EBP, which helps cost absorption for both Kodak operations and tenants at Eastman Business Park.
- Kodak plans to capitalize on its intellectual property through new business or licensing opportunities, focusing on opportunities in smart material applications and printed electronics markets and also pursuing certain opportunities in 3D printing materials.

RESULTS OF OPERATIONS

	Year Ended December 31, 2022	% of Sales	Year Ended December 31, 2021	% of Sales	\$ Change vs. 2021
Revenues	\$ 1,205		\$ 1,150		\$ 55
Cost of revenues	1,035		986		49
Gross profit	170	14%	164	14%	6
Selling, general and administrative expenses	153	13%	177	15%	(24)
Research and development costs	34	3%	33	3%	1
Restructuring costs and other	10	1%	6	1%	4
Other operating income, net	(1)	0%	(6)	-1%	5
Loss from continuing operations before interest expense, pension income excluding service cost component, other charges (income), net and income taxes	(26)	(2%)	(46)	(4%)	20
Interest expense	40	3%	33	3%	7
Pension income excluding service cost component	(98)	(8%)	(102)	(9%)	4
Other charges (income), net	1	0%	(5)	(0%)	6
Earnings from continuing operations before income taxes	31	3%	28	2%	3
Provision for income taxes	5	0%	4	0%	1
NET EARNINGS	\$ 26	2%	\$ 24	2%	\$ 2

Revenues

For the year ended December 31, 2022, revenues improved approximately \$55 million compared with the same period in 2021 primarily due to improved pricing within Traditional Printing (\$151 million), improved pricing and product mix as well as increased volume within Advanced Materials and Chemicals (\$15 million and \$11 million, respectively), improved product mix in Digital Printing (\$5 million) and improved volume in Brand (\$2 million). Partially offsetting these favorable impacts was lower volume in Traditional Printing and Digital Printing (\$46 million and \$13 million, respectively) and unfavorable foreign currency (\$70 million). See segment discussions for additional details.

Gross Profit

Gross profit for 2022 improved approximately \$6 million compared with the same period in 2021, primarily due to improved pricing and product mix in Traditional Printing (\$153 million), improved pricing and product mix as well as higher volume in Advanced Materials and Chemicals (\$13 million and \$5 million, respectively), improved volume in Brand (\$2 million) and a reduction in employee benefit reserves (\$6 million) and depreciation (\$2 million). Partially offsetting these favorable impacts was higher aluminum costs in Traditional Printing (\$69 million), higher manufacturing costs and lower volumes in Traditional Printing (\$63 million) and Digital Printing (\$9 million), higher manufacturing costs in Advanced Materials and Chemicals (\$12 million), an increase in restructuring costs reported in Cost of revenues (\$3 million) and unfavorable foreign currency (\$16 million). See segment discussions for additional details.

Selling, General and Administrative Expenses

Consolidated SG&A for 2022 decreased \$24 million in 2022 primarily due to lower consulting and other costs (\$21 million) primarily associated with lower spend on investigations and litigation and insurance reimbursement. SG&A includes \$10 million of income in the year ended December 31, 2022 representing insurance reimbursement of legal costs previously paid by the Company associated with investigations and litigation matters. Also contributing to the decrease in Consolidated SG&A was a decrease in employee benefit reserves (\$4 million), lower equity-based compensation (\$2 million) and favorable foreign currency (\$6 million) partially offset by an increase in selling and administrative costs (\$2 million).

Research and Development Costs

Consolidated R&D expenses decreased \$1 million in 2022.

Restructuring Costs and Other

These costs, as well as restructuring costs reported in Cost of revenues, are discussed under the "Restructuring Costs and Other" section in this MD&A and Note 19, "Restructuring Costs and Other".

Interest Expense

The increase in interest expense in 2022 of \$7 million primarily reflects the impact of the Delayed Draw Term Loan entered into during the second quarter of 2022 combined with a full year of interest expense associated with the financing transactions entered into during the first quarter of 2021. Refer to Note 9, "Debt and Finance Leases" for further information.

Other Operating Income, Net

For details, refer to Note 16, "Other Operating Income, Net."

Pension Income

For details, refer to Note 20, "Retirement Plans."

Other Charges (Income), Net

For details, refer to Note 17, "Other Charges (Income), Net."

Provision for Income Taxes

For details, refer to Note 18, "Income Taxes."

DETAILED RESULTS OF OPERATIONS**Net Revenues from Continuing Operations by Reportable Segment**

(in millions)	Year Ended December 31,	
	2022	2021
Traditional Printing	\$ 711	\$ 659
Digital Printing	227	249
Advanced Materials and Chemicals	234	212
Brand	17	15
Total of reportable segments	1,189	1,135
Other	16	15
Consolidated total	\$ 1,205	\$ 1,150

Kodak's segment measure of profit and loss is an adjusted earnings before interest, taxes, depreciation and amortization ("Operational EBITDA"). As demonstrated in the table below, Operational EBITDA represents the earnings from continuing operations before income taxes excluding non-service cost components of pension and other postemployment benefits income; depreciation and amortization expense; restructuring costs and other; stock-based compensation expense; consulting and other costs; idle costs; other operating income, net; interest expense and other (charges) income, net.

Kodak's segments are measured using Operational EBITDA both before and after allocation of corporate selling, general and administrative expenses ("SG&A"). The segment earnings measure reported is after allocation of corporate SG&A as this most closely aligns with U.S. GAAP. Research and development activities not directly related to the other segments are reported within the Advanced Materials and Chemicals segment.

Segment Operational EBITDA and Consolidated Income from Continuing Operations Before Income Taxes

(in millions)	Year Ended December 31,	
	2022	2021
Traditional Printing	\$ 27	\$ 9
Digital Printing	(22)	(5)
Advanced Materials and Chemicals	(1)	(6)
Brand	14	13
Other	3	2
Depreciation and amortization	(29)	(31)
Restructuring costs and other	(13)	(6)
Stock-based compensation	(5)	(7)
Consulting and other costs (1)	2	(19)
Idle costs (2)	(3)	(2)
Other operating income, net, (3)	1	6
Interest expense (3)	(40)	(33)
Pension income excluding service cost component (3)	98	102
Other (charges) income, net (3)	(1)	5
Consolidated earnings from continuing operations before income taxes	<u>\$ 31</u>	<u>\$ 28</u>

- (1) Consulting and other costs are primarily professional services and internal costs associated with certain corporate strategic initiatives, investigations and litigation. Consulting and other costs include \$10 million of income in the year ended December 31, 2022 representing insurance reimbursement of legal costs previously paid by the Company associated with investigations and litigation matters.
- (2) Consists of third-party costs such as security, maintenance and utilities required to maintain land and buildings in certain locations not used in any Kodak operations and the costs, net of any rental income received, of underutilized portions of certain properties.
- (3) As reported in the Consolidated Statement of Operations.

In 2022, Kodak decreased employee benefit reserves by \$15 million composed of a reduction in workers' compensation reserves of approximately \$13 million driven by changes in discount rates and a decrease in other employee benefit reserves of approximately \$2 million, driven by both changes in discount rates and favorable experience. The decrease in reserves in 2022 impacted gross profit by approximately \$9 million, R&D by approximately \$1 and SG&A by approximately \$5 million.

Kodak decreased workers' compensation reserves by approximately \$4 million in 2021 driven by changes in discount rates. The decrease in reserves in 2021 impacted gross profit by approximately \$3 million and SG&A by approximately \$1 million.

2023 Segments**Change in Segments**

Effective February 2023 Kodak changed its organizational structure. The Traditional Printing segment and the Digital Printing segment were combined into one segment, named the Print segment. No changes were made to Kodak's other segments.

TRADITIONAL PRINTING SEGMENT**Revenues**

	Year Ended December 31,		
	2022	2021	\$ Change
Revenues	\$ 711	\$ 659	\$ 52
Operational EBITDA	27	9	18
Operational EBITDA as a % of revenues	4%	1%	

Revenues

The increase in Traditional Printing revenues of approximately \$52 million primarily reflected improved pricing in Prepress Solutions consumables (\$151 million), partially offset by reduced volumes in Prepress Solutions consumables (\$47 million) and unfavorable foreign currency (\$53 million).

Operational EBITDA

Traditional Printing Operational EBITDA improved approximately \$18 million primarily due to improved pricing in Prepress Solutions consumables (\$151 million), improved product mix in Prepress Solutions equipment (\$2 million) and a reduction in employee benefit reserves (\$2 million) partially offset by higher aluminum costs (\$69 million), increased manufacturing costs and lower volume (\$63 million) driven by increases in other costs such as utilities, transportation and supplies, and higher selling and administrative costs (\$4 million) as well as unfavorable foreign currency (\$3 million).

DIGITAL PRINTING SEGMENT

	Year Ended December 31,		
	2022	2021	\$ Change
Revenues	\$ 227	\$ 249	\$ (22)
Operational EBITDA	(22)	(5)	(17)
Operational EBITDA as a % of revenues	-10%	-2%	

Revenues

The decrease in Digital Printing revenues of approximately \$22 million primarily reflected volume declines in Electrophotographic Printing Solutions equipment as well as consumables and service (\$3 million each), volume declines in PROSPER components, Software and VERSAMARK consumables and service (\$2 million each) and unfavorable foreign currency (\$14 million). The unfavorable impacts were partially offset by improved pricing and product mix in PROSPER annuities and Electrophotographic Printing Solutions equipment (\$2 million each).

Operational EBITDA

The decline in Digital Printing Operational EBITDA of \$17 million was driven by increased manufacturing costs (\$9 million), increased spending on R&D projects and selling and administrative costs (each \$2 million) unfavorable product mix in Electrophotographic Printing Solutions consumables and service (\$1 million) and unfavorable foreign currency (\$4 million), partially offset by higher margins on Electrophotographic Printing Solutions equipment (\$1 million) and a reduction in employee benefit reserves (\$4 million).

ADVANCED MATERIALS AND CHEMICALS SEGMENT

	Year Ended December 31,		
	2022	2021	\$ Change
Revenues	\$ 234	\$ 212	\$ 22
Operational EBITDA	(1)	(6)	5
Operational EBITDA as a % of revenues	0%	-3%	

Revenues

The improvement in Advanced Materials and Chemicals revenues of approximately \$22 million is the result of pricing and product mix improvements in Industrial Film and Chemicals (\$14 million) and improved volume in Industrial Film and Chemicals and Motion Picture (\$3 million and \$9 million, respectively) partially offset by unfavorable foreign currency (\$3 million).

Operational EBITDA

Advanced Materials and Chemicals Operational EBITDA improved approximately \$5 million reflecting improved pricing and product mix and increased volume in Industrial Film and Chemicals (\$12 million and \$3 million, respectively), higher Motion Picture volumes (\$3 million) and a reduction in employee benefit reserves (\$4 million). The favorable impacts were partially offset by increased manufacturing costs for Industrial Film and Chemicals (\$11 million), increased SG&A and R&D spending (\$2 million and \$1 million, respectively) and unfavorable foreign currency (\$2 million).

BRAND SEGMENT

	Year Ended December 31,		
	2022	2021	\$ Change
Revenues	\$ 17	\$ 15	\$ 2
Operational EBITDA	14	13	1
Operational EBITDA as a % of revenues	82%	87%	

Brand revenues and Operational EBITDA improved approximately \$2 million and \$1 million, respectively, reflecting higher volumes in 2022.

RESTRUCTURING COSTS AND OTHER**2022**

Restructuring actions taken in 2022 were initiated to reduce Kodak's cost structure as part of its commitment to drive sustainable profitability and included ceasing manufacturing of the Electrophotographic Printing Solutions equipment products as well as various targeted reductions in manufacturing, service, sales, research and development and administrative functions.

As a result of these actions, for the year ended December 31, 2022 Kodak recorded \$13 million of charges of which \$10 million were reported as Restructuring costs and other and \$3 million were reported as Cost of revenues in the accompanying Consolidated Statement of Operations.

Kodak made cash payments related to restructuring of approximately \$6 million for the year ended December 31, 2022.

The restructuring actions implemented in 2022 are expected to generate future annual cash savings of approximately \$12 million. These savings are expected to reduce future annual Cost of revenues, SG&A and R&D expenses by \$2 million, \$7 million and \$3 million, respectively. Kodak expects the majority of the annual savings to be in effect by the end of the second quarter of 2023 as actions are completed. See Note 19, "Restructuring Costs and Other" for additional information on Kodak's restructuring actions.

LIQUIDITY AND CAPITAL RESOURCES

Management's Assessment of Liquidity

Kodak ended the year with a cash balance of \$217 million, a decrease of \$145 million from December 31, 2021. On June 15, 2022, Kodak exercised its right to draw down in full an additional \$50 million in aggregate principal pursuant to the Term Loan Credit Agreement and received net proceeds of \$49 million. On July 13, 2022, Kodak invested \$25 million of the proceeds received from the Delayed Draw Term Loans to acquire a minority preferred equity interest in Wildcat.

The financing transactions entered into during the first quarter of 2021 and the full draw down of the Delayed Draw Term Loans in the second quarter of 2022 provided additional liquidity for the Company to fund on-going operations and obligations, invest in growth opportunities in Kodak's businesses of print and advanced materials and chemicals and for corporate infrastructure investments expected to contribute to improvements in cash flow.

Available liquidity includes cash balances and the Excess Availability under the 2023 Amended ABL Credit Agreement (see below for the definition of Excess Availability). The amount of available liquidity is subject to fluctuations and includes cash balances held by various entities worldwide. At December 31, 2022 and 2021 approximately \$152 million and \$250 million, respectively, of cash and cash equivalents were held within the U.S. and approximately \$65 million and \$112 million, respectively, of cash and cash equivalents were held outside the U.S. Cash balances held outside the U.S. are generally required to support local country operations and may have high tax costs or other limitations that delay the ability to repatriate, and therefore may not be readily available for transfer to other jurisdictions. Kodak utilizes cash balances outside the U.S. to fund needs in the U.S. through the use of inter-company loans.

As of December 31, 2022 and 2021, outstanding inter-company loans to the U.S. were \$399 million and \$418 million, respectively, which includes short-term inter-company loans from Kodak's international finance center of \$109 million and \$119 million, respectively. In China, where approximately \$24 million and \$42 million of cash and cash equivalents was held as of December 31, 2022 and 2021, respectively, there are limitations related to net asset balances that may impact the ability to make cash available to other jurisdictions in the world. Under the terms of the Amended ABL Credit Agreement, the Company is permitted to invest up to \$75 million in Restricted Subsidiaries that are not Loan Parties and in joint ventures or Unrestricted Subsidiaries that are not party to the Amended ABL Credit Agreement.

The Company's Hong Kong subsidiary has an \$80 million inter-company loan from one of the Company's Chinese subsidiaries with a maturity date of November 16, 2024, the proceeds of which were in turn loaned to the Company. The inter-company loan is required to be repaid in the next two years in four equal installments, with the first \$20 million installment due by November 16, 2023 and the remaining installments due in 2024. The amounts repaid to the Chinese subsidiary may not be able to be loaned, repatriated or otherwise moved back to the U.S., in which case the Company's U.S. liquidity would be reduced. If the inter-company loan is not extended, refinanced or amended and the Hong Kong subsidiary does not pay any of the installments by the end of the 30-day grace period following notice by the Chinese subsidiary after a failure to pay on the due date of such installment, the Hong Kong subsidiary would default on the inter-company loan. Such a default may cause a cross-default under the Company's other credit facilities unless requisite waivers are obtained. The Company intends to pursue alternatives that will allow it and its subsidiaries to perform their obligations to each other while minimizing the impact on U.S. liquidity.

On March 14, 2023, the Company entered into an amendment to the Amended ABL Credit Agreement (the "2023 Amended ABL Credit Agreement") and Letter of Credit Facility Agreement (the "2023 Amended L/C Facility Agreement") to, among other things: (i) extend the maturity date from February 26, 2024 to the earliest of June 12, 2024, the termination of the 2023 Amended L/C Facility Agreement or the 2023 Amended ABL Credit Agreement, as applicable, or the date that is 91 days prior to the earliest scheduled maturity date or mandatory redemption date of any of the Company's Term Loans, 2021 Convertible Notes, Series B Preferred Stock, Series C Preferred Stock or any refinancings of any of the foregoing; (ii) maintain daily Minimum Liquidity of \$50 million, subject to certain cure rights, in addition to maintaining the existing quarterly Minimum Liquidity of \$80 million, and (iii) on February 26, 2024 decrease the aggregate amount of commitments from \$90 million to \$81 million.

The maturity date of the Amended ABL Credit Agreement prior to the 2023 Amended ABL Credit Agreement was February 26, 2024 or the date that is 91 days prior to the earliest scheduled maturity date or mandatory redemption date of any of the Company's Term Loans, 2021 Convertible Notes, Series B Preferred Stock, Series C Preferred Stock or any refinancings of any of the foregoing. Upon the occurrence of the termination date under the Amended ABL Credit Agreement the obligations thereunder will become due, and the Company will need to provide alternate collateral in place for the \$9 million of letters of credit issued under the Amended ABL Credit Agreement.

Under both the Amended ABL Credit Agreement and the L/C Facility Agreement the Company is required to maintain Minimum Liquidity of at least \$80 million, which is tested at the end of each quarter. Minimum Liquidity was \$150 million and \$250 million at December 31, 2022 and 2021. If Minimum Liquidity falls below \$80 million an Event of Default would occur and the Agent has the right to declare the obligation of each Lender to make Revolving Loans and of the Issuing Banks to issue Letters of Credit to be immediately terminated, and declare the Revolving Loans, all interest thereon and all other amounts payable under the Amended ABL Credit Agreement to be immediately due and payable. The 2023 Amended ABL Credit Agreement and 2023 Amended L/C Facility Agreement added a requirement that the Company maintain a daily Minimum Liquidity of \$50 million, subject to certain cure rights, in addition to the quarterly Minimum Liquidity requirement of \$80 million.

Kodak is experiencing negative cash flows due to supply chain disruptions, shortages in materials and labor, increased labor, commodity and distribution costs and slowdown in customer demand related to global economic conditions. The economic uncertainty surrounding the COVID-19 pandemic, the war in Ukraine, the current inflationary environment, and other global events represents an additional element of complexity in Kodak's plans to return to sustainable positive cash flow. The Company cannot predict the duration and scope of the COVID-19 pandemic, the war in Ukraine, as well as other factors such as the ability to continue to secure raw materials and components, the impact of rising costs of labor, commodity and distribution costs, or how quickly and to what extent normal economic and operating conditions can resume.

Kodak's plans to return to sustainable positive cash flow include growing revenues profitably through pricing actions, implementing effective working capital utilization, reducing operating expenses, continuing to simplify the organizational structure, generating cash from selling and leasing underutilized assets and implementing ways to reduce cash collateral needs.

Kodak believes that its liquidity position is adequate to fund its operating and investing needs for the next twelve months, to maintain compliance with the Minimum Liquidity provisions under the credit agreements and to provide the flexibility to respond as necessary to ordinary changes in the business and economic environment. Kodak's ability to adequately fund its long-term liquidity and capital requirements will be dependent on amending, refinancing or extending the maturity date of the 2023 Amended ABL Credit Agreement and 2023 Amended L/C Facility Agreement, or finding alternative collateral in place of the letters of credit issued such facilities, managing worldwide cash through intercompany loans, distributions or other mechanisms while minimizing the impact on U.S. liquidity, generating positive cash flows from operations or obtaining additional financing to fund its growth investments.

Amended and Restated ABL Credit Agreement

On February 26, 2021, the Company entered into an amendment to the ABL Credit Agreement (as amended in 2021, the "Amended ABL Credit Agreement"). The Amended ABL Credit Agreement amended the ABL Credit Agreement to, among other things, (i) extend the maturity date to February 26, 2024 or the date that is 90 days prior to the earliest scheduled maturity date or mandatory redemption date of any of the Company's Term Loans, 2021 Convertible Notes, Series B Preferred Stock, Series C Preferred Stock or any refinancings of any of the foregoing and (ii) decrease the aggregate amount of commitments from \$110 million to \$90 million.

Commitments under the Amended ABL Credit Agreement continue to be able to be used in the form of revolving loans or letters of credit. The Company had issued approximately \$58 million and \$46 million letters of credit under the Amended ABL Credit Agreement as of December 31, 2022 and 2021, respectively.

Letter of Credit Facility Agreement

On February 26, 2021, the Company entered into a Letter of Credit Facility Agreement (the "L/C Facility Agreement", and together with the Term Loan Credit Agreement and the Amended ABL Credit Agreement the "Credit Agreements"). Pursuant to the L/C Facility Agreement, the L/C Lenders committed to issue letters of credit on the Company's behalf in an aggregate amount of up to \$50 million, provided the Company posts cash collateral in an amount greater than or equal to 103% of the aggregate amount of letters of credit issued and outstanding at any given time (the "L/C Cash Collateral").

The term of the L/C Facility Agreement is three years, subject to the same automatic springing maturity as the Amended ABL Credit Agreement. The Company had issued approximately \$43 million and \$44 million letters of credit under the L/C Facility Agreement as of December 31, 2022 and 2021, respectively. The letters of credit under the L/C Facility Agreement are collateralized by cash collateral (L/C Cash Collateral). The balance on deposit in the L/C Cash Collateral account as of December 31, 2022 and 2021 is approximately \$44 million and \$45 million, respectively.

Under the Amended ABL Credit Agreement and the L/C Facility Agreement the Company is required to maintain Excess Availability above 12.5% of lender commitments (\$11.25 million at December 31, 2022 and 2021), which is tested at the end of each month. Excess Availability was \$21 million and \$27 million as of December 31, 2022 and 2021, respectively. If Excess Availability falls below 12.5% of lender commitments a Fixed Charge Coverage Ratio Trigger Event would occur. During any Fixed Charge Coverage Ratio Trigger Event, the Company would be required to maintain a Fixed Charge Coverage Ratio of greater than or equal to 1.0 to 1.0.

If Excess Availability falls below 12.5% of lender commitments, Kodak may, in addition to the requirement to be in compliance with the minimum Fixed Charge Coverage Ratio, become subject to cash dominion control. Since Excess Availability was greater than 12.5% of lender commitments at December 31, 2022 and 2021, Kodak was not required to have a minimum Fixed Charge Coverage Ratio of 1.0 to 1.0.

Kodak intends to continue to maintain Excess Availability above the minimum threshold. The borrowing base is supported by Eligible Receivables, Eligible Inventory and Eligible Equipment. As noted above, since Excess Availability was greater than 12.5% of lender commitments Kodak was not required to have a minimum Fixed Charge Coverage Ratio of 1.0 to 1.0. As of December 31, 2022 Fixed Charges (as defined in the ABL Credit Agreement) exceeded EBITDA by approximately \$39 million, therefore the Fixed Charges Coverage Ratio was less than 1.0 to 1.0.

Cash Flow:

Cash, cash equivalents and restricted cash balances were as follows:

(in millions)	As of December 31,	
	2022	2021
Cash, cash equivalents and restricted cash	\$ 286	\$ 423

Cash Flow Activity

(in millions)	Year Ended December 31,		Year-Over-Year Change
	2022	2021	
Cash flows from operating activities:			
Net cash used in operating activities	\$ (116)	\$ (47)	\$ (69)
Cash flows from investing activities:			
Net cash used in investing activities	(56)	(20)	(36)
Cash flows from financing activities:			
Net cash provided by financing activities	43	238	(195)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(8)	(4)	(4)
Net (decrease) increase in cash, cash equivalents and restricted cash	\$ (137)	\$ 167	\$ (304)

Operating Activities

Net cash used in operating activities increased \$69 million for the year ended December 31, 2022 as compared with the prior year primarily due to an increase in cash used for accounts payable, an increased investment in inventory to strengthen the ability to supply customers and lower reductions of accounts receivable driven by revenue growth.

Investing Activities

Net cash used in investing activities increased \$36 million for the year ended December 31, 2022 as compared to the prior year due to the investment in Wildcat and an increase in capital expenditures driven by investments in growth initiatives and back-office automation.

Financing Activities

The change in net cash provided by financing activities of \$195 million in the year ended December 31, 2022 compared to the corresponding period in 2021 was primarily driven by net proceeds of \$247 million received in the prior year from refinancing transactions partially offset by proceeds of \$49 million received in the second quarter of 2022 from the Delayed Draw Term Loans as well as lower preferred stock cash dividend payments in the current year period.

Excess Cash Flow

On an annual basis, the Company will prepay, within 10 business days following the filing of annual Form 10-K, outstanding Loans in an amount equal to Excess Cash Flow ("ECF") as defined in the Term Loan Credit Agreement provided no such prepayment is required if such prepayment would cause U.S. liquidity to be less than \$85 million. For the year ended December 31, 2022 ECF was a negative amount, therefore no prepayment is required in 2023.

Other Collateral Requirements

The New York State Workers' Compensation Board ("NYSWCB") requires security deposits related to self-insured workers' compensation obligations, which security deposits are recalculated annually. Due to changes in 2019 to the manner in which the required security deposit is determined, the Company has been required to post additional collateral over the last several years. At December 31, 2022, the Company had posted \$75.0 million of collateral, representing 107% of the Company's undiscounted actuarial workers' compensation obligations. Based on informal communications with representatives of the NYWCB, the Company understands the NYWCB may adopt a financial contingency requirement based on the self-insured's credit rating that could obligate the Company to post up to an additional \$38 million of collateral as early as December 2023. The Company believes no financial contingency is appropriate where the security deposit is already 107% of the undiscounted actuarial liability; however, the Company cannot predict the financial contingency methodology that will be adopted by the NYWCB, if any. Any additional security deposit required based on a financial contingency concept adopted by the NYWCB would reduce the Company's liquidity to the extent the Company is unable to obtain some form of relief from such requirement.

Based on the legacy nature of the Company's workers' compensation obligations, the undiscounted actuarial obligation has been declining and the Company expects it to continue to decline. While it may not be indicative of the rate of future declines, the undiscounted actuarial liability declined by an average of \$5.5 million per year between 2014 and 2022. Accordingly, subject to the possibility of being required to post additional collateral based on a financial contingency methodology adopted by the NYWCB or other changes to the calculation of required security deposits by the NYWCB, the Company expects the amount of the required security deposit to decline over time and gradually return the capital used to support the security deposits that have been made.

As a result of the Company's credit ratings, during the second quarter of 2020 two surety bond holders notified the Company they required approximately \$9 million of incremental collateral. The Company reduced the surety bond value by approximately \$9 million in July 2020 with an equivalent increase to an existing letter of credit with the New York Workers' Compensation Board. The Company could be required to provide up to an additional \$4 million of letters of credit to the issuers of certain surety bonds in the future to fully collateralize the bonds.

Other Sources/Uses of Cash Related to Financing Transactions and Stock Options

The holders of Series B Preferred Stock are entitled to cumulative dividends payable quarterly in cash at a rate of 4% per annum. All dividends have been declared and paid when due. Due to exercises of stock options primarily by ex-employees, the Company received approximately \$33 million, net of tax payments, in 2020.

Defined Benefit Pension and Postretirement Plans

Kodak made contributions (funded plans) or paid net benefits (unfunded plans) totaling approximately \$14 million relating to its non-U.S. defined benefit pension and postretirement benefit plans in 2022. For 2023, the forecasted contribution (funded plans) and net benefit payment (unfunded plans) requirements for its non-U.S. defined benefit pension and postretirement plans are approximately \$12 million. Kodak does not expect to make any cash contributions to its major U.S. pension plan in 2023, and expects benefit payments (unfunded plans) related to its non-major U.S. plans to be less than \$1 million.

Capital Expenditures

Cash flows from investing activities included \$31 million for capital expenditures for the year ended December 31, 2022. Kodak expects approximately \$30 million to \$40 million of cash flows for investing activities from capital expenditures for the year ending December 31, 2023.

U.S. International Development Finance Corporation Non-Binding Letter of Interest

On July 28, 2020, the U.S. International Development Finance Corporation signed a non-binding letter of interest to provide a subsidiary of the Company with a potential \$765 million loan to support the launch of Kodak Pharmaceuticals, an initiative that would manufacture pharmaceutical ingredients for essential generic drugs. The DFC Loan would have been for facility upgrades and construction, provide working capital, and finance other necessary direct expenditures supporting the launch of Kodak Pharmaceuticals. As previously reported, on April 22, 2022 the Company received a letter from the DFC advising the Company that the authority conferred on the DFC by Executive Order 13922 expired on March 27, 2022 and that, consequently, the DFC is unable to consider the project further and the Company's application has been closed.

The Company remains interested in working with governmental agencies to leverage its assets and technology to on-shore manufacturing of pharmaceutical and other healthcare materials. As described under "Overview" above, the Company is also continuing to explore expanding further into the pharmaceutical space on a smaller scale than contemplated by the DFC Loan using other sources of capital, including a portion of the capital raised by the Company on February 26, 2021.

Contractual Obligations

The impact that contractual obligations are expected to have on Kodak's cash flow in future periods is as follows:

(in millions)	Total	As of December 31, 2022					
		2023	2024	2025	2026	2027	2028+
Long-term debt (1)	\$ 379	\$ 1	\$ 2	\$ 1	\$ 366	\$ 1	\$ 8
Interest payments on debt (2)	99	31	29	29	6	1	3
Operating lease obligations	68	20	12	7	6	5	18
Purchase obligations (3)	50	25	19	4	1	1	—
Convertible preferred stock cash dividends (7)	13	4	4	4	1	—	—
Total Note 1 (4) (5) (6)	<u>\$ 609</u>	<u>\$ 81</u>	<u>\$ 66</u>	<u>\$ 45</u>	<u>\$ 380</u>	<u>\$ 8</u>	<u>\$ 29</u>

- (1) Primarily represents the maturity values of Kodak's long-term debt obligations as of December 31, 2022. The loans made under the Term Credit Agreement become due on February 26, 2026. The 2021 Convertible Notes become due on May 28, 2026. The loans made under the Term Credit Agreement receive 4% paid-in-kind interest at maturity. The 2021 Convertible Notes receive 5% paid-in-kind interest at maturity. The paid-in-kind interest for both the Term Credit Agreement and the 2021 Convertible Notes is included in the principal amount due. The contractual obligations do not reflect any contingent mandatory annual principal prepayments that may be required to be made upon achieving certain excess cash flow targets, as defined in the Term Credit Agreement. Refer to Note 9, "Debt and Finance Leases".
- (2) Includes cash interest payments on the Term Credit Agreement, the RED-Rochester LLC debt and commitment fees for the Amended ABL Credit Agreement and the L/C Facility Agreement.
- (3) Purchase obligations include agreements related to raw materials, supplies, production and administrative services, as well as marketing and advertising, that are enforceable and legally binding on Kodak and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. Purchase obligations exclude agreements that are cancelable without penalty.
- (4) Due to uncertainty regarding the completion of tax audits and possible outcomes, an estimate of the timing of payments related to uncertain tax positions and interest cannot be made. See Note 18, "Income Taxes," for additional information regarding Kodak's uncertain tax positions.
- (5) For 2023, the Company is forecasting \$12 million in contributions and net benefit payments for its Non-U.S. major defined benefit retirement plans and other postretirement benefit plans. Expected contributions are excluded from the contractual obligations table because they do not represent contractual cash outflows, as they are dependent on numerous factors which may result in a wide range of outcomes.
- (6) Because timing of their future cash outflows are uncertain, the other long-term liabilities presented in Note 8, "Other Long-Term Liabilities," are excluded from this table.

(7) On February 26, 2021, the Company issued 1,000,000 shares of 4% Series B Convertible Preferred Stock, no par value per share (the "Series B Preferred Stock") and 1,000,000 shares of 5% Series C Convertible Preferred Stock, no par value per share (the "Series C Preferred Stock"). The Series B and Series C Preferred Stock have a liquidation preference of \$100 per share. The holders of Series B Preferred Stock are entitled to cumulative dividends payable quarterly in cash at a rate of 4% per annum. The holder of Series C Preferred Stock is entitled to cumulative dividends payable quarterly in additional shares of Series C Preferred Stock. If holders of the Series B and Series C Preferred stock convert their shares into common stock, dividends will decrease. The Company is required to redeem all shares not converted prior to May 28, 2026 at \$100 per share plus the amount of any accrued and unpaid dividends. Due to uncertainty regarding the number of shares that will be redeemed, the redemption amount has not been included in the above table. Refer to Note 10, "Redeemable, Convertible Preferred Stock".

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Preparation of the Company's Consolidated Financial Statements in conformity with accounting principles generally accepted in the United States (U.S. GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. Significant accounting policies used in the preparation of the Consolidated Financial Statements are more fully described in Note 1, "Basis of Presentation and Significant Accounting Policies". The accounting policies most critical to the preparation of the consolidated financial statements and require the most difficult, subjective or complex judgments are described below.

Revenue Recognition

Kodak's revenue transactions include sales of products, equipment, software, services, integrated solutions, intellectual property and brand licensing and commercial real estate management activities. Complex multiple element arrangements with nonstandard terms and conditions may require significant contract interpretation to determine the appropriate accounting, including the allocation of transaction price to the various performance obligations and determination of the stand-alone selling price of each performance obligation. When the stand-alone selling price is not directly observable, it is estimated based on management judgment considering available data such as internal margin objectives, pricing strategies, market/competitive conditions, historical profitability data, as well as other observable inputs.

For equipment sales, revenue recognition may depend on completion of installation based on the type of equipment, level of customer specific customization and other contractual terms. In instances in which the agreement with the customer contains a customer acceptance clause, revenue is deferred until customer acceptance is obtained, provided the customer acceptance clause is considered to be substantive.

At the time revenue is recognized, Kodak also records reductions to revenue for customer incentive programs such as volume rebates and promotional allowances. For those incentives that require estimation, such as for volume rebates, Kodak uses historical experience and both internal and customer data to estimate the sales incentive at the time revenue is recognized. In the event that the actual results of these items differ from the estimates, adjustments to the sales incentive accruals are recorded. Future market conditions and product transitions may require Kodak to increase customer incentive offers, possibly resulting in an incremental reduction of revenue at the time the incentive is offered.

Valuation and Useful Lives of Long-Lived Assets, Including Goodwill and Intangible Assets

Goodwill is tested for impairment at the reporting unit level (operating segment or one level below an operating segment) annually and whenever events or changes in circumstances occur that would more likely than not reduce the fair value of the reporting unit below its' carrying amount. As of December 31, 2022, goodwill is only recorded in the Brand and Software reporting units.

Determining the fair value of a reporting unit involves the use of significant estimates and assumptions. Kodak estimates the fair value of its reporting units using the guideline public company method and discounted cash flow method. To estimate fair value utilizing the guideline public company method, Kodak applies valuation multiples, derived from the operating data of publicly-traded benchmark companies, to the same operating data of the reporting units. The valuation multiples are based on earnings before interest, taxes, depreciation and amortization ("EBITDA"). To estimate fair value utilizing the discounted cash flow method, Kodak establishes an estimate of future cash flows for each reporting unit and discounts those estimated future cash flows to present value.

Kodak performed a quantitative test of impairment for all reporting units for its annual goodwill impairment test as of December 31, 2022. Kodak utilized the discounted cash flow method and guideline public company method to estimate the fair value of reporting units with goodwill.

For these reporting units, Kodak selected equal weighting of the guideline public company method and the discounted cash flow method as the valuation approaches produced comparable ranges of fair value. Fair values for the reporting units without goodwill were estimated using the discounted cash flow method only.

To estimate fair value utilizing the discounted cash flow method, Kodak established an estimate of future cash flows for the period January 1, 2023 to December 31, 2027 and discounted the estimated future cash flows to present value. The expected cash flows were derived from earnings forecasts and assumptions regarding growth and margin projections, as applicable. The discount rates are estimated based on an after-tax weighted average cost of capital ("WACC") for each reporting unit reflecting the rate of return that would be expected by a market participant. The WACC also takes into consideration a company specific risk premium for each reporting unit reflecting the risk associated with the overall uncertainty of the financial projections. Discount rates of 16% to 35% were utilized in the valuation based on Kodak's best estimates of the after-tax WACC of each reporting unit.

A terminal value was included for all reporting units at the end of the cash flow projection period to reflect the remaining value that the reporting unit is expected to generate. The terminal value was calculated using either the constant growth method ("CGM") based on the cash flows of the final year of the discrete period or the H-model, which assumes the growth during the terminal period starts at a higher rate and declines in a linear manner over a specified transition period toward a stable growth rate.

Based upon the results of Kodak's December 31, 2022 analysis, Kodak concluded that the fair value of the reporting units substantially exceeded their carrying values, therefore no impairment of goodwill was indicated. Impairment of goodwill could occur in the future if a reporting unit's fair value changes significantly, if Kodak's market capitalization significantly declines, if a reporting unit's carrying value changes materially compared with changes in its fair values, or as a result of changes in operating segments or reporting units.

The carrying value of the indefinite-lived intangible asset related to the Kodak trade name is evaluated for potential impairment annually or whenever events or changes in circumstances indicate that it is more likely than not that the asset is impaired.

Kodak performed its annual test of impairment for the Kodak trade name as of December 31, 2022. The fair value of the Kodak trade name was valued using the income approach, specifically the relief from royalty method based on the following significant assumptions: (a) forecasted revenues for the period January 1, 2023 to December 31, 2027, including a terminal year with growth rates ranging from -0.5% to 2.5%; (b) an after-tax royalty rate of 0.4% of expected net sales determined with regard to comparable market transactions and profitability analysis; and (c) discount rates ranging from 17% to 29%, which were based on the after-tax WACC.

Based on the results of Kodak's December 31, 2022 annual impairment test, the carrying value of the Kodak trade name exceeded its fair value and Kodak recorded a pre-tax impairment charge of \$1 million driven by lower forecasted revenues primarily associated with decision to cease manufacturing of the Electrophotographic Printing Solutions equipment products. Impairment of the Kodak trade name could occur in the future if expected revenues decline or if there are significant changes in the discount rates or royalty rates. A one percent increase in the discount rate and a 10% miss in expected revenues would impact the fair value of the Kodak trade name by \$2 million.

Long-lived assets other than goodwill and indefinite-lived intangible assets are evaluated for impairment whenever events or changes in circumstances indicate the carrying value may not be recoverable. When evaluating long-lived assets for impairment, the carrying value of an asset group is compared to its estimated undiscounted future cash flows. An impairment is indicated if the estimated future cash flows are less than the carrying value of the asset group. The impairment is the excess of the carrying value over the fair value of the long-lived asset group. Kodak updated its estimate of undiscounted cash flows for each asset group as of December 31, 2022. Based on the results of the impairment tests, no impairments were recorded.

The value of property, plant, and equipment is depreciated over its expected useful life in such a way as to allocate it as equitably as possible to the periods during which services are obtained from their use, which aims to distribute the value over the remaining estimated useful life of the unit in a systematic and rational manner. An estimate of useful life not only considers the economic life of the asset, but also the remaining life of the asset to the entity. Impairment of long-lived assets other than goodwill and indefinite lived intangible assets could occur in the future if expected future cash flows decline or if there are significant changes in the estimated useful life of the assets.

Convertible Notes Embedded Conversion Features

The 2021 Convertible Notes are considered more akin to debt-type instruments. The economic characteristics and risks of the embedded conversion features in the 2021 Convertible Notes were not considered clearly and closely related to the 2021 Convertible Notes. Accordingly, these embedded features were bifurcated from the 2021 Convertible Notes and separately accounted for at fair value as a single derivative, which reduced the carrying value of the 2021 Convertible Notes. The derivative is being accounted for at fair value with subsequent changes in the fair value being reported as part of Other charges (income), net in the Consolidated Statement of Operations.

The fair value of the embedded conversion features derivative is calculated using unobservable inputs (Level 3 fair measurements). The binomial model is used to estimate the fair value of the embedded derivative which requires the input of highly subjective assumptions, including the expected volatility of Kodak's common stock. If factors change and different assumptions are used, the fair value of the embedded derivative liability could be materially different in the future. Refer to Note 14, "Financial Instruments" for additional information regarding the key inputs in the determination of fair value for the embedded conversion features.

The table below summarizes the expected stock price volatility and the closing stock price used as of December 31, 2022 and 2021:

	2021 Convertible Notes			
	As of December 31,			
	2022		2021	
Value of embedded derivative liability at December 31, 2022 (in millions)	\$	2	\$	4
Expected stock price volatility as of December 31, 2022		50%		36%
Closing stock price as of December 31, 2022	\$	3.05	\$	4.68

Taxes

Kodak recognizes deferred tax liabilities and assets for the expected future tax consequences of operating losses, credit carry-forwards and temporary differences between the carrying amounts and tax basis of Kodak's assets and liabilities.

Kodak records a valuation allowance to reduce its net deferred tax assets to the amount that is more likely than not to be realized. Kodak has considered forecasted earnings, future taxable income, the geographical mix of earnings in the jurisdictions in which Kodak operates and prudent and feasible tax planning strategies in determining the need for these valuation allowances. As of December 31, 2022, Kodak has net deferred tax assets before valuation allowances of approximately \$799 million and a valuation allowance related to those net deferred tax assets of approximately \$826 million, resulting in net deferred tax liabilities of approximately \$27 million.

Kodak considers both positive and negative evidence, in determining whether a valuation allowance is needed by territory, including, but not limited to, whether particular entities are in three-year cumulative income positions. As of March 31, 2020, Kodak determined that it was more likely than not that deferred tax assets outside the U.S. which were not offset with valuation allowances as of March 31, 2020 would not be realized due to reductions in estimates of future profitability as a result of the COVID-19 pandemic in locations outside the U.S. Accordingly, Kodak recorded a provision of \$167 million associated with the establishment of a valuation allowance on those deferred tax assets.

Kodak may be able to make the determination that the realization of deferred tax assets in certain foreign jurisdictions is more likely than not in the future. Kodak will continue to evaluate whether valuation allowances are needed, at a jurisdictional level, in future reporting periods.

It is possible that sufficient positive evidence, including sustained profitability, may become available in future periods with respect to one or more jurisdictions to reach a conclusion that all or part of the valuation allowance with respect to such jurisdictions could be reversed.

Utilization of net operating losses ("NOL") and tax credits may be subject to limitations in the event of significant changes in stock ownership of the Company in the future. Section 382 of the Internal Revenue Code of 1986, as amended, imposes annual limitations on the utilization of NOL carryforwards, other tax carryforwards, and certain built-in losses as defined under that Section, upon an ownership change. In general terms, an ownership change may result from transactions that increase the aggregate ownership of five percent stockholders in Kodak's stock by more than 50 percentage points over a three-year testing period. The Company has a relatively high concentration of stockholders that hold 5% or more of the outstanding stock. Future transactions, when combined with reported transactions within the testing period could aggregate an ownership change during the testing period in excess of 50 percentage points.

A Section 382 ownership change would significantly impair Kodak's ability to utilize NOLs and tax credits in the U.S. As of December 31, 2022, Kodak had available U.S. NOL carry-forwards for income tax purposes of approximately \$1,486 million and unused foreign tax credits of \$358 million. Any impairment of these tax attributes would be fully offset by a corresponding decrease in Kodak's U.S. valuation allowance, which would result in no net tax provision.

Kodak has deferred tax liabilities of \$17 million and \$20 million for potential taxes on undistributed earnings, primarily attributable to foreign withholding taxes, as of December 31, 2022 and 2021, respectively.

Kodak operates within multiple taxing jurisdictions worldwide and is subject to audit in these jurisdictions. These audits can involve complex issues, which may require an extended period of time for resolution. Management's ongoing assessments of the outcomes of these issues and related tax positions require judgment, and although management believes that adequate provisions have been made for such issues, there is the possibility that the ultimate resolution of such issues could have an adverse effect on the earnings of Kodak. Conversely, if these issues are resolved favorably in the future, the related provisions would be reduced, thus having a positive impact on earnings.

Pension and Other Postretirement Benefits

Kodak's defined benefit pension and other postretirement benefit costs and obligations are estimated using several key assumptions. The assumptions that have the most significant effect on the Company's consolidated financial position and results of operations are the expected long-term rate of return on plan assets ("EROA") and discount rates. Actual results that differ from Kodak's assumptions are recorded as unrecognized gains and losses as a component of accumulated other comprehensive income in shareholders' equity and are amortized to earnings over the estimated future service period of the active participants in the plan or, if the plan is almost entirely inactive, the average remaining lifetime expectancy of inactive participants, to the extent such total net unrecognized gains and losses exceed 10% of the greater of the plan's projected benefit obligation or the calculated value of plan assets. Significant differences in actual experience or significant changes in future assumptions would affect Kodak's pension and other postretirement benefit costs and obligations.

Return on Plan Assets

EROA is a long-term assumption, which Kodak reviews annually. Kodak utilizes asset and liability modeling studies to adjust asset exposures to conform to its investment strategy, and to review its liability hedging program. These studies generate forward-looking estimates of correlation, risk and return which are used in the development of the EROA. The EROA is estimated utilizing a forward-looking building block model which factors in the expected risk of each asset category, return, and correlation over a five to seven-year horizon, and weighs the exposures by the strategic asset allocation.

Historical inputs are utilized in the forecasting model, including historical asset returns with adjustments based on the forward-looking view. Kodak aggregates investments into major asset categories based on the underlying benchmark of the strategy. Each allocation to these major asset categories is determined to accomplish unique objectives, including enhancing portfolio return, providing portfolio diversification, or hedging plan liabilities, in accordance with the overall investment strategy.

The EROA, once set, is applied to the calculated value of plan assets in the determination of the expected return component of Kodak's pension expense. Kodak uses a calculated value of plan assets, which recognizes gains and losses in the fair value of assets over a four-year period, to calculate expected return on assets.

At December 31, 2022, the calculated value of the assets of Kodak's major U.S. and non-U.S. defined benefit pension plans was approximately \$4.1 billion and the fair value of the assets of Kodak's major U.S. and non-U.S. defined benefit pension plans was approximately \$4.2 billion. Asset gains and losses that are not yet reflected in the calculated value of plan assets are not included in amortization of unrecognized gains and losses.

Kodak's major U.S. defined benefit pension plan accounts for substantially all of Kodak's net pension income and represents approximately 87% of the total fair value of major plan assets as of December 31, 2022. The following table presents actual and expected return on plan assets, as well as the corresponding percentages for Kodak's major U.S. defined benefit pension plan:

(in millions)	Year Ended December 31,		
	2022	2021	2020
Actual return on plan assets	\$ (152)	\$ 716	\$ 495
Expected return on plan assets	178	167	196
Actual rate of return on plan assets	(6.1%)	17.7%	14.9%
Expected rate of return on plan assets	5.3%	5.2%	6.0%

The actual rate of return on Kodak's major U.S. defined benefit pension plan for 2022 was (6.1%), lower than the expected rate of return of 5.3%, driven by lower than expected bond performance due to rising interest rates. For 2021 the actual rate of return exceeded the expected rate of return driven by higher returns for the U.S. Plan's private equity and hedge fund portfolio. For 2020 the actual rate of return exceeded the expected rate of return driven by strong stock and bond market performance as well as realized gains recorded from derivative investments held by the U.S. Plan. The expected average rate of return on plan assets is a long-term, forward-looking assumption and will likely differ from the actual return in any specific year.

Gains or losses from direct investments in derivative instruments by Kodak's major U.S. defined benefit pension plan can be volatile from year to year and could materially affect the fair value of plan assets. The total net realized (losses) gains from these derivative investments that were included in the actual return on plan assets balance in the table above for the years ending December 31, 2022, 2021 and 2020 were approximately (\$128) million, \$(23) million and \$159 million, respectively. Refer to the Derivative Instruments discussion below for additional information.

Approximately \$2.6 billion and \$3.4 billion of the total fair value of Kodak's major U.S. defined pension plan as of December 31, 2022 and 2021, respectively, represents plan assets where the fair market value is not readily determinable and are measured using the net asset value ("NAV") per share expedient. Except for investments in private equity funds and real estate funds, the remaining investments have redemption rights and can be, and historically have been, redeemed by the U.S. Plan at NAV. For private equity funds and real estate funds, the investors do not have an option to redeem their interest in these funds but rather receive distributions from time to time through the liquidation of the underlying investments in the funds. Secondary sales of a material portion of the investments in these funds are infrequent and historically, immaterial portions of these funds were sold for values not significantly different from NAV.

Discount Rates:

Generally, Kodak bases the discount rate assumption for its significant plans on high quality corporate bond yields in the respective countries as of the measurement date. Specifically, for its U.S., Canadian, Euro-zone and UK plans, Kodak determines a discount rate using a cash flow model to incorporate the expected timing of benefit payments and an AA-rated corporate bond yield curve. For Kodak's U.S. Plan, the Citigroup Above Median Pension Discount Curve is used. For Kodak's non-U.S. plans, discount rates are determined by comparison to published local high-quality bond yields or indices considering estimated plan duration and removing any outlying bonds, as warranted.

Changes in discount rates for Kodak's major U.S. defined benefit plan has the most significant effect on the total projected benefit obligations for Kodak.

The table below shows the discount rates for Kodak's major U.S. pension plan for the years shown:

	Year Ended December 31,		
	2022	2021	2020
Discount Rates - Projected Benefit Obligation:			
U.S. Plan	5.13%	2.54%	2.09%

As discount rates reflect the market rate on the measurement date, the rates can be volatile from year to year. The increase in the discount rate for Kodak's major U.S. defined benefit pension plan from December 31, 2021 to December 31, 2022 resulted in a decrease in the projected benefit obligation of approximately \$582 million at December 31, 2022. The increase in the discount rate for the U.S. Plan from December 31, 2020 to December 31, 2021 resulted in a decrease in the projected benefit obligation of approximately \$105 million at December 31, 2021.

Sensitivity Analysis:

The following table illustrates the sensitivity to a change to certain key assumptions used in the calculation of expense for the year ending December 31, 2023 and the projected benefit obligation ("PBO") at December 31, 2022 for Kodak's major U.S. and non-U.S. defined benefit pension plans:

(in millions)	Impact on 2023 Pre-Tax Pension Expense Increase (Decrease)		Impact on PBO December 31, 2022 Increase (Decrease)	
	U.S.	Non-U.S.	U.S.	Non-U.S.
	Change in assumption:			
25 basis point decrease in discount rate	\$ 6	\$ —	\$ 46	\$ 12
25 basis point increase in discount rate	(6)	—	(44)	(12)
25 basis point decrease in EROA	9	1	N/A	N/A
25 basis point increase in EROA	(9)	(1)	N/A	N/A

Total pension income from continuing operations before special termination benefits, curtailments and settlements for the major U.S. defined benefit pension plan was \$88 million for 2022 and is expected to be approximately \$148 million in 2023. The increase in pension income for 2023 is driven by an anticipated higher expected rate of return on plan assets than experienced in 2022. Pension expense from continuing operations before special termination benefits, curtailments and settlements for the major non-U.S. defined benefit pension plans was \$8 million for 2022 and is projected to be \$3 million in 2023.

Derivative Instruments:

Kodak's major U.S. defined benefit plan utilizes derivative investments primarily to hedge liability interest rate risk to U.S. government bonds. Kodak's major U.S. defined benefit pension plan's derivative portfolio consists of exchange traded futures contracts. As of December 31, 2022 and 2021 the notional amount of these derivative instruments approximated \$389 million and \$1.0 billion, respectively. Daily variation margin payments are made to or received from the counterparty for changes in the market value of futures contracts and are recorded as realized gains and losses in the Gain on Plan Assets balance. As these futures contracts have short-term maturities, the fair value of these derivative instruments at December 31, 2022 and 2021 was \$0 million and \$10 million, respectively, which represents the unrealized gains and losses on these contracts. Refer to Note 20, "Retirement Plans" in the Notes to Financial Statements for additional information.

An increase in interest rates is the primary factor that could precipitate material losses in the U.S. Plan's existing derivatives portfolio. A 25-basis point increase in interest rates would cause a loss from the government bond derivatives of approximately \$7 million. However, as illustrated in the above table, a 25-basis point increase in the discount rate used to measure the PBO of the U.S. Plan would cause a \$44 million decrease in the PBO. Accordingly, while an increase in interest rates would expose the U.S. Plan's derivative investments to losses, it would also likely result in an offsetting decrease the U.S. Plan's PBO.

Kodak's major U.S. defined benefit plan invests in a diversified portfolio of hedge funds that utilize a variety of investment strategies. The total net asset value of these hedge funds was approximately \$1.5 billion and \$1.8 billion as of December 31, 2022 and 2021 respectively. Separate from the U.S. Plan's direct investments in exchange traded futures contracts, hedge funds may utilize derivative instruments to execute their investment strategy.

Any gains or losses, as well as changes in the fair value of derivative investments held by the hedge fund, are included in the hedge fund's net asset value. Losses could occur in the future from hedge fund investments which may result in part from the use of derivative investments by the hedge funds. However, the maximum potential loss on any individual fund would be limited to the U.S. Plan's investment in that fund.

Workers' Compensation

The estimated liability for workers' compensation is based on actuarially estimated discounted cost of claims, including claims incurred but not reported. Historical loss development factors are utilized to project the future development of incurred losses, and the amounts are adjusted based on actual claim experience, settlements, claim development trends, changes in state regulations and judicial interpretations.

Changes in discount rates is the primary driver for changes in workers' compensation reserves. Kodak decreased workers' compensation reserves by approximately \$13 million and \$4 million in 2022 and 2021, respectively, driven by changes in discount rates. A 25 basis-point change in the discount rate would have had a \$1 million impact on the expense and net liability as of December 31, 2022.

Stock Compensation

Kodak recorded stock compensation expense of \$5 million, \$7 million and \$15 million for the years ended December 31, 2022, 2021 and 2020, respectively. Compensation expense is recognized over the service or performance period for each separately vesting tranche of the award and is adjusted for actual forfeitures before vesting.

Compensation cost related to restricted stock units and restricted stock awards was \$4 million, \$5 million and \$1 million for the years ended December 31, 2022, 2021 and 2020, respectively. The fair value of restricted stock units and restricted stock awards is based on the closing market price of the Company's stock on the grant date. Changes in the fair value of restricted stock units and restricted stock awards is driven by the volatility of the Company's stock price and the number of awards issued.

Compensation cost related to stock options for the years ended December 31, 2022, 2021 and 2020 was \$1 million, \$2 million and \$14 million, respectively. Except for the awards granted on July 27, 2020, which resulted in approximately \$12.6 million of compensation expense being recognized in the year ended December 31, 2020, Kodak utilizes the Black-Scholes option valuation model to estimate the fair value of stock options. Changes in the fair value of stock options is primarily driven by the volatility of the Company's stock price.

Inventories

Inventories are stated at the lower of average cost or net realizable value. Judgment is required to assess the ultimate demand for and realizable value of inventory. The analysis of inventory carrying values considers several factors including length of time inventory is on hand, historical sales, product shelf life, product life cycle, product category, and product obsolescence.

New Accounting Pronouncements

A description of new accounting pronouncements is contained in Note 1, "Summary of Significant Accounting Policies".

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Kodak, as a result of its global operating and financing activities, is exposed to changes in foreign currency exchange rates, commodity prices, and interest rates, which may adversely affect its results of operations and financial position. In seeking to minimize the risks associated with such activities, Kodak may enter into derivative contracts. Kodak does not utilize financial instruments for trading or other speculative purposes. Foreign currency forward contracts are used to hedge existing foreign currency denominated assets and liabilities, especially those of Kodak's international finance center, as well as forecasted foreign currency denominated intercompany sales.

Kodak's exposure to changes in interest rates results from its investing and borrowing activities used to meet its liquidity needs. Long-term debt is generally used to finance long-term investments, while short-term debt is used to meet working capital requirements.

Using a sensitivity analysis based on estimated fair value of open foreign currency forward contracts using available forward rates, if the U.S. dollar had been 10% stronger at December 31, 2022 and 2021, the fair value of open forward contracts would have decreased \$11 million and \$14 million, respectively. Such changes in fair value would be substantially offset by the revaluation or settlement of the underlying positions hedged.

The majority of the Company's debt is fixed rate debt. The fair market value of fixed-rate debt is sensitive to changes in interest rates. At December 31, 2022 and 2021, a 10% change in market interest rates would change the fair value of the Company's debt by approximately \$1 million in each period.

Kodak's financial instrument counterparties are high-quality investment or commercial banks with significant experience with such instruments. Kodak manages exposure to counterparty credit risk by requiring specific minimum credit standards and diversification of counterparties. Kodak has procedures to monitor the credit exposure amounts. The maximum credit exposure at December 31, 2022 was not significant to Kodak.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Eastman Kodak Company

Opinion on the Financial Statements

We have audited the accompanying consolidated statement of financial position of Eastman Kodak Company (the Company) as of December 31, 2022 and 2021, the related consolidated statement of operations, comprehensive income (loss), equity (deficit) and cash flow for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15 (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the 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 issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated March 16, 2023 expressed an unqualified opinion thereon.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's 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 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 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 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 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 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 financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the 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 account or disclosure to which it relates.

Retirement Benefits – Valuation of Private Equity Investment

Description of the Matter

As described in Note 20 to the consolidated financial statements, at December 31, 2022 the Company's U.S Plan holds \$1,095 million in private equity investments. The private equity investments are valued primarily based on independent appraisals, discounted cash flow models, cost and comparable market transactions. These investments are valued by the U.S. Plan using the net asset value (NAV) per share expedient. For investments with lagged pricing, the Company uses the latest available net asset values, and also considers expected return and other relevant material events for the year-end valuation of these investments.

Auditing the net asset value of these private equity investments is challenging because of the higher estimation uncertainty associated with the inputs to the underlying net asset values and estimated returns used in determining year-end valuations for investments with lagged pricing. Additionally, certain information regarding the net asset value of these private equity investments is based on unaudited information available to management at the time of valuation.

*How We Addressed
the Matter in Our
Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of the Company's controls over the valuation of plan assets. This included testing management's controls over private equity investment valuation, which included a look-back analysis to identify if there were significant changes in the private equity fund valuations subsequent to year-end, inspecting responses to questionnaires sent to asset managers and evaluating the fourth quarter returns of benchmark indices to assess whether the valuations of the U.S. Plan's private equity investments with lagged pricing should be adjusted.

Our audit procedures included, among others, comparing private equity investment returns to selected relevant benchmark indices to test the fourth quarter market activity for investments with lagged pricing, obtaining the latest audited financial statements for a sample of investments and comparing to the Company's recorded values and understanding any significant differences. We also inquired of management about changes to the investment portfolio and/or related investment strategies and considerations. We assessed the historical accuracy of management's estimates by comparing actual activity to previous estimates. We evaluated for contrary evidence by confirming the net asset values of the investments and ownership interests directly with the trustees and a sample of managers at year end. We also assessed the appropriateness of the disclosures in the consolidated financial statements.

We have served as the Company's auditor since 2020.

/s/ Ernst & Young LLP
Rochester, New York
March 16, 2023

of Firm Id EY-42;

Auditor Ernst & Young
Name:

Auditor Location: Rochester, New York, USA

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Eastman Kodak Company

Opinion on Internal Control over Financial Reporting

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

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated statement of financial position of the Company as of December 31, 2022 and 2021, the related consolidated statement of operations, comprehensive income (loss), equity (deficit) and cash flow for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15 and our report dated March 16, 2023 expressed an unqualified opinion thereon.

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

Definition and Limitations of Internal Control Over Financial Reporting

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

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

/s/ Ernst & Young LLP
Rochester, New York
March 16, 2023

EASTMAN KODAK COMPANY
CONSOLIDATED STATEMENT OF OPERATIONS

(in millions, except per share data)

	Year Ended December 31,		
	2022	2021	2020
Revenues			
Sales	\$ 983	\$ 925	\$ 806
Services	222	225	223
Total net revenues	<u>1,205</u>	<u>1,150</u>	<u>1,029</u>
Cost of revenues			
Sales	885	830	743
Services	150	156	151
Total cost of revenues	<u>1,035</u>	<u>986</u>	<u>894</u>
Gross profit	170	164	135
Selling, general and administrative expenses	153	177	172
Research and development costs	34	33	34
Restructuring costs and other	10	6	17
Other operating income, net	(1)	(6)	(14)
Loss from continuing operations before interest expense, pension income excluding service cost component, loss on early extinguishment of debt, other charges (income), net and income taxes	(26)	(46)	(74)
Interest expense	40	33	12
Pension income excluding service cost component	(98)	(102)	(98)
Loss on early extinguishment of debt	—	—	2
Other charges (income), net	1	(5)	386
Earnings (loss) from continuing operations before income taxes	<u>31</u>	<u>28</u>	<u>(376)</u>
Provision for income taxes	5	4	168
Earnings (loss) from continuing operations	<u>26</u>	<u>24</u>	<u>(544)</u>
Earnings from discontinued operations, net of income taxes	—	—	3
NET EARNINGS (LOSS)	<u>\$ 26</u>	<u>\$ 24</u>	<u>\$ (541)</u>
Basic earnings (loss) per share attributable to Eastman Kodak Company common shareholders:			
Continuing operations	\$ 0.16	\$ 0.28	\$ (9.83)
Discontinued operations	—	—	0.06
Total	<u>\$ 0.16</u>	<u>\$ 0.28</u>	<u>\$ (9.77)</u>
Diluted earnings (loss) per share attributable to Eastman Kodak Company common shareholders:			
Continuing operations	\$ 0.16	\$ 0.27	\$ (9.83)
Discontinued operations	—	—	0.06
Total	<u>\$ 0.16</u>	<u>\$ 0.27</u>	<u>\$ (9.77)</u>
Number of common shares used in basic and diluted earnings (loss) per share:			
Basic	78.9	78.4	57.4
Diluted	80.6	80.5	57.4

The accompanying notes are an integral part of these consolidated financial statements.

EASTMAN KODAK COMPANY
CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME (LOSS)

(in millions)

	Year Ended December 31,		
	2022	2021	2020
NET EARNINGS (LOSS)	\$ 26	\$ 24	\$ (541)
Other comprehensive income (loss), net:			
Currency translation adjustments and other	(12)	6	(16)
Pension and other postretirement benefit plan obligation activity, net of tax	253	661	(13)
Other comprehensive income (loss), net attributable to Eastman Kodak Company	241	667	(29)
COMPREHENSIVE INCOME (LOSS), NET	<u>\$ 267</u>	<u>\$ 691</u>	<u>\$ (570)</u>

The accompanying notes are an integral part of these consolidated financial statements.

EASTMAN KODAK COMPANY
CONSOLIDATED STATEMENT OF FINANCIAL POSITION

(in millions)

	As of December 31,	
	2022	2021
ASSETS		
Cash and cash equivalents	\$ 217	\$ 362
Trade receivables, net of allowances of \$7 and \$7	177	175
Inventories, net	237	219
Other current assets	48	49
Current assets held for sale	2	2
Total current assets	<u>681</u>	<u>807</u>
Property, plant and equipment, net	154	140
Goodwill	12	12
Intangible assets, net	28	34
Operating lease right-of-use assets	39	47
Restricted cash	62	54
Pension and other postretirement assets	1,233	1,022
Other long-term assets	76	55
TOTAL ASSETS	<u>\$ 2,285</u>	<u>\$ 2,171</u>
LIABILITIES, REDEEMABLE, CONVERTIBLE PREFERRED STOCK AND EQUITY		
Accounts payable, trade	\$ 134	\$ 153
Short-term borrowings and current portion of long-term debt	1	1
Current portion of operating leases	15	13
Other current liabilities	143	142
Total current liabilities	<u>293</u>	<u>309</u>
Long-term debt, net of current portion	316	253
Pension and other postretirement liabilities	230	382
Operating leases, net of current portion	31	45
Other long-term liabilities	171	205
Total liabilities	<u>1,041</u>	<u>1,194</u>
Commitments and contingencies (Note 12)		
Redeemable, convertible preferred stock, no par value, \$100 per share liquidation preference	203	196
Equity		
Common stock, \$0.01 par value	—	—
Additional paid in capital	1,160	1,166
Treasury stock, at cost	(11)	(10)
Accumulated deficit	(570)	(596)
Accumulated other comprehensive income	462	221
Total equity	<u>1,041</u>	<u>781</u>
TOTAL LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK AND EQUITY	<u>\$ 2,285</u>	<u>\$ 2,171</u>

The accompanying notes are an integral part of these consolidated financial statements.

**EASTMAN KODAK COMPANY
CONSOLIDATED STATEMENT OF EQUITY (DEFICIT)**

(in millions, except share data)

	Common	Additional Paid in	Accumulated	Accumulated Other Comprehensive	Treasury	Total	Redeemable Convertible Preferred Stock (1)
	Stock	Capital	Deficit	Income (Loss)	Stock		Stock (1)
Equity (deficit) as of December 31, 2020	\$ —	\$ 1,152	\$ (620)	\$ (446)	\$ (9)	\$ 77	\$ 191
Net earnings	—	—	24	—	—	24	—
Other comprehensive income (loss) (net of tax):							
Currency translation adjustments	—	—	—	6	—	6	—
Pension and other postretirement liability adjustments	—	—	—	661	—	661	—
Repurchase of Series A Preferred Stock	—	—	—	—	—	—	(100)
Exchange of Series A Preferred Stock	—	92	—	—	—	92	(92)
Expiration of Series A embedded derivative	—	11	—	—	—	11	—
Issuance of convertible, redeemable Series B Preferred Stock, net	—	(95)	—	—	—	(95)	93
Issuance of common stock	—	10	—	—	—	10	—
Issuance of convertible, redeemable Series C Preferred Stock, net	—	—	—	—	—	—	97
Preferred stock cash and accrued dividends	—	(4)	—	—	—	(4)	—
Preferred stock in-kind dividends	—	(4)	—	—	—	(4)	4
Preferred stock deemed dividends	—	(3)	—	—	—	(3)	3
Treasury stock purchases (2)	—	—	—	—	(1)	(1)	—
Stock-based compensation	—	7	—	—	—	7	—
Equity (deficit) as of December 31, 2021	\$ —	\$ 1,166	\$ (596)	\$ 221	\$ (10)	\$ 781	\$ 196
Net earnings	—	—	26	—	—	26	—
Other comprehensive income (loss) (net of tax):							
Currency translation adjustments	—	—	—	(12)	—	(12)	—
Pension and other postretirement liability adjustments	—	—	—	253	—	253	—
Preferred stock cash and accrued dividends	—	(4)	—	—	—	(4)	—
Preferred stock in-kind dividends	—	(5)	—	—	—	(5)	5
Preferred stock deemed dividends	—	(2)	—	—	—	(2)	2
Treasury stock purchases (2)	—	—	—	—	(1)	(1)	—
Stock-based compensation	—	5	—	—	—	5	—
Equity (deficit) as of December 31, 2022	\$ —	\$ 1,160	\$ (570)	\$ 462	\$ (11)	\$ 1,041	\$ 203

**EASTMAN KODAK COMPANY
CONSOLIDATED STATEMENT OF EQUITY (DEFICIT) (Continued)**

	Common	Additional	Accumulated	Accumulated	Treasury		Redeemable
	Stock	Paid in	Deficit	Other	Stock	Total	Convertible
		Capital		Comprehensive			Preferred
				Loss			Stock (1)
Equity (deficit) as of December 31, 2019	\$ —	\$ 604	\$ (79)	\$ (417)	\$ (9)	99	\$ 182
Net loss	—	—	(541)	—	—	(541)	—
Other comprehensive loss (net of tax):							
Currency translation adjustments	—	—	—	(16)	—	(16)	—
Pension and other postretirement liability adjustments	—	—	—	(13)	—	(13)	—
Series A preferred stock cash and accrued dividends	—	(11)	—	—	—	(11)	—
Series A Preferred Stock deemed dividends	—	(9)	—	—	—	(9)	9
Conversion of 2019 Convertible Notes	—	520	—	—	—	520	—
Stock option exercises	—	29	—	—	—	29	—
Stock-based compensation	—	19	—	—	—	19	—
Equity (deficit) as of December 31, 2020	\$ —	\$ 1,152	\$ (620)	\$ (446)	\$ (9)	\$ 77	\$ 191

(1) There are 60 million shares of no-par value preferred stock authorized, 2.1 million of which are issued and outstanding at December 31, 2022. 2.0 million shares of preferred stock were issued and outstanding at December 31, 2021 and 2020.

(2) Represents purchases of common stock to satisfy tax withholding obligations.

The accompanying notes are an integral part of these consolidated financial statements.

EASTMAN KODAK COMPANY
CONSOLIDATED STATEMENT OF CASH FLOW

(in millions)	Year Ended December 31,		
	2022	2021	2020
Cash flows from operating activities:			
Net earnings (loss)	\$ 26	\$ 24	\$ (541)
Adjustments to reconcile to net cash used in operating activities:			
Depreciation and amortization	29	31	37
Pension and other postretirement income	(77)	(83)	(77)
Change in fair value of the Preferred Stock and Convertible Notes embedded derivatives	(3)	(7)	382
Asset impairments	1	—	3
Stock based compensation	5	7	15
Non-cash changes in workers' compensation and other employee benefit reserves	(15)	(4)	4
Net losses (gains) on sales of businesses/assets	—	1	(10)
Loss on early extinguishment of debt	—	—	2
(Benefit) provision for deferred income taxes	(3)	(1)	160
(Increase) decrease in trade receivables	(12)	(5)	33
(Increase) decrease in inventories	(31)	(19)	12
(Decrease) increase in trade accounts payable	(12)	38	(36)
Decrease in liabilities excluding borrowings	(36)	(29)	(26)
Other items, net	12	—	7
Total adjustments	(142)	(71)	506
Net cash used in operating activities	(116)	(47)	(35)
Cash flows from investing activities:			
Additions to properties	(31)	(21)	(17)
Purchase of preferred equity interest	(25)	—	—
Net proceeds from sales of businesses/assets, net	—	1	2
Net proceeds from return of equity investment	—	—	2
Net cash used in investing activities	(56)	(20)	(13)
Cash flows from financing activities:			
Net proceeds from the Term Loan Credit Agreement	49	215	—
Proceeds from issuance of Convertible Notes	—	25	—
Net proceeds from Series C Preferred Stock	—	99	—
Net proceeds from the sale of common stock	—	10	—
Repurchase of Series A Preferred Stock	—	(100)	—
Debt issuance costs	—	(2)	—
Proceeds from stock option exercises	—	—	33
Preferred stock dividend payments	(4)	(7)	(22)
Treasury stock purchases	(1)	(1)	—
Finance lease payments	(1)	(1)	(1)
Net cash provided by financing activities	43	238	10
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(8)	(4)	4
Net (decrease) increase in cash, cash equivalents and restricted cash	(137)	167	(34)
Cash, cash equivalents and restricted cash, beginning of period	423	256	290
Cash, cash equivalents and restricted cash, end of period ⁽¹⁾	\$ 286	\$ 423	\$ 256

(1) Refer to Note 2, "Cash, Cash Equivalents and Restricted Cash" for the components of cash, cash equivalents and restricted cash.

The accompanying notes are an integral part of these consolidated financial statements.

EASTMAN KODAK COMPANY
CONSOLIDATED STATEMENT OF CASH FLOW (Continued)

(in millions)

SUPPLEMENTAL CASH FLOW INFORMATION

	Year Ended December 31,		
	2022	2021	2020
Cash paid for interest and income taxes was:			
Interest (net of portion capitalized of \$3 million in 2022 and \$0 in both 2021 and 2020)	\$ 23	\$ 14	\$ 8
Income taxes (net of refunds)	\$ 6	\$ 2	\$ 8

The accompanying notes are an integral part of these consolidated financial statements.

**EASTMAN KODAK COMPANY
NOTES TO FINANCIAL STATEMENTS**

NOTE 1: BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

ACCOUNTING PRINCIPLES

The consolidated financial statements and accompanying notes are prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). The following is a description of the significant accounting policies of Kodak.

BASIS OF CONSOLIDATION

The consolidated financial statements include the accounts of EKC and all companies directly or indirectly controlled by EKC, either through majority ownership or otherwise. Kodak consolidates variable interest entities if Kodak has a controlling financial interest and is determined to be the primary beneficiary of the entity.

RECLASSIFICATIONS

Certain amounts for prior periods have been reclassified to conform to the current period classification in the disaggregated revenue information for the Digital Printing segment in Note 15, "Revenue".

USE OF ESTIMATES

The preparation of financial statements in conformity with U.S. GAAP accounting requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of commitments and contingencies at year end and the reported amounts of revenues and expenses during the reporting periods presented. Actual results could differ from these estimates.

FOREIGN CURRENCY

For most subsidiaries and branches outside the U.S., the local currency is the functional currency. The financial statements of these subsidiaries and branches are translated into U.S. dollars as follows: assets and liabilities at year-end exchange rates; revenue, expenses and cash flows at average exchange rates; and shareholders' equity at historical exchange rates. For those subsidiaries for which the local currency is the functional currency, the resulting translation adjustment is recorded as a component of Accumulated other comprehensive income in the accompanying Consolidated Statement of Financial Position.

For certain other subsidiaries and branches outside the U.S., operations are conducted primarily in U.S. dollars, which is therefore the functional currency. Monetary assets and liabilities of these foreign subsidiaries and branches, which are recorded in local currency, are remeasured at year-end exchange rates, while revenue, expense, and gain and loss accounts, which are recorded in local currency, are remeasured at average exchange rates. Non-monetary assets and liabilities are remeasured at historical exchange rates. Adjustments that result from the remeasurement of the assets and liabilities of these subsidiaries are included in Other charges (income), net in the accompanying Consolidated Statement of Operations.

The effects of foreign currency transactions, including related hedging activities, are included in Other charges (income), net, in the accompanying Consolidated Statement of Operations.

CASH EQUIVALENTS

All highly liquid investments with a remaining maturity of three months or less at date of purchase are considered to be cash equivalents.

INVENTORIES

Inventories are stated at the lower of cost or net realizable value. The cost of inventories is determined by the average cost method, which approximates current cost. Kodak provides inventory reserves for excess, obsolete or slow-moving inventory based on changes in customer demand, technology developments or other economic factors.

PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment are recorded at cost, net of accumulated depreciation. Kodak capitalizes additions and improvements while maintenance and repairs are charged to expense as incurred. Upon sale or other disposition, the applicable amounts of asset cost and accumulated depreciation are removed from the accounts and the net amount, less proceeds from disposal, is charged or credited to Other operating income, net in the Consolidated Statement of Operations.

Kodak calculates depreciation expense using the straight-line method over the assets' estimated useful lives, which are as follows:

	Estimated Useful Lives
Buildings and building improvements	5-40
Land improvements	4-20
Leasehold improvements	3-20
Equipment	3-20
Tooling	1-3
Furniture and fixtures	5-10

Kodak depreciates leasehold improvements over the shorter of the lease term or the assets' estimated useful life.

INTERNAL USE SOFTWARE

Expenditures for software purchases and software developed for internal use are capitalized and depreciated on a straight-line basis over the estimated useful lives, generally 3 to 10 years. For software developed for internal use, certain costs are capitalized, including external direct costs of materials and services associated with developing or obtaining the software, and payroll and payroll-related costs for employees who are directly associated with internal-use software projects. Capitalization of these costs ceases no later than the point at which the project is substantially complete and ready for its intended use. Costs associated with preliminary project stage activities, training, maintenance, and other post-implementation stage activities are expensed as incurred. The carrying value of owned software and development costs is recorded in Property, plant and equipment, net while the carrying value of cloud-based software and development costs is recorded in Other current assets and Other long-term assets. The carrying value of software and development costs is reviewed for impairment when events or changes in circumstances indicate that the carrying value of such assets may not be recoverable.

GOODWILL

Goodwill is not amortized but is required to be assessed for impairment at least annually and whenever events or changes in circumstances occur that would more likely than not reduce the fair value of the reporting unit below its carrying amount.

When testing goodwill for impairment, Kodak may assess qualitative factors for some or all of its reporting units to determine whether it is more likely than not (that is, a likelihood of more than 50 percent) that the fair value of a reporting unit is less than its carrying amount, including goodwill. If Kodak determines based on this qualitative test of impairment that it is more likely than not that a reporting unit's fair value is less than its carrying amount or elects to bypass the qualitative assessment for some or all of its reporting units, then a quantitative goodwill impairment test is performed. The amount of goodwill impairment, if any, is calculated as the amount by which a reporting unit's carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. Determining the fair value of a reporting unit involves the use of significant estimates and assumptions. Refer to Note 6, "Goodwill and Other Intangible Assets".

WORKERS' COMPENSATION

Kodak self-insures and participates in high-deductible insurance programs with retention and per occurrence deductible levels for claims related to workers' compensation. The estimated liability for workers' compensation is based on actuarially estimated, discounted cost of claims, including claims incurred but not reported. Historical loss development factors are utilized to project the future development of incurred losses, and the amounts are adjusted based on actual claim experience, settlements, claim development trends, changes in state regulations and judicial interpretations. Refer to Note 7, "Other Current Liabilities" and Note 8, "Other Long-Term Liabilities" for the estimated liabilities. Amounts recoverable from insurance companies or third parties are estimated using historical experience and estimates of future recoveries. Estimated recoveries are not offset against the related accrual. The amount recorded for the estimated recoveries at December 31, 2022 and 2021 was \$15 million and \$20 million, respectively, of which \$12 million and \$18 million are reported in Other long-term assets in the Consolidated Statement of Financial Position, respectively. The remaining \$3 million and \$2 million, respectively, is reported in Other current assets in the Consolidated Statement of Financial Position.

LEASES

Kodak as lessee

Kodak determines if an arrangement is a lease at inception. The primary criteria used to classify transactions as operating or finance leases are: (1) whether the ownership transfers at the end of the lease, (2) whether the lease term is equal to or greater than 75% of the economic life of the asset, and (3) whether the present value of the minimum lease payments is equal to or greater than 90% of the fair value of the asset at inception of the lease. Kodak does not have leases that include assets of a specialized nature, generally does not provide residual value guarantees or have any leases for which the exercise of end-of-lease purchase options is reasonably assured at lease inception.

Operating lease right-of-use ("ROU") assets represent the right to use an underlying asset for the lease term and operating lease liabilities represent the obligation to make lease payments arising from the operating lease. ROU assets and liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. The ROU assets are adjusted for prepayments and lease incentives. Variable lease payments are excluded from the measurement of ROU assets and lease liabilities and are recognized in expense in the period in which the obligation for those payments is incurred. Lease agreements may include options to extend or terminate the lease at Kodak's discretion, which are included in the determination of the lease term when they are reasonably certain to be exercised.

Kodak's lease agreements are primarily for real estate space and vehicles. Arrangements for goods and services are assessed to determine if the arrangement contains a lease at its inception. Operating leases are included within Operating lease right-of-use assets, Current portion of operating leases and Operating leases, net of current portion in the Consolidated Statement of Financial Position. Finance leases are included in Property, plant and equipment, net, Short-term borrowings and current portion of long-term debt and Long-term debt, net of current portion in the Consolidated Statement of Financial Position.

When available, the rate implicit in the lease is used to discount lease payments to present value; however, many leases do not provide a readily determinable implicit rate. Therefore, Kodak applies its incremental borrowing rate to discount the lease payments at lease commencement. The incremental borrowing rate is the rate of interest that EKC would have to pay to borrow, on a collateralized basis, over a similar term. Renewal options and/or termination options are factored into the determination of lease payments if considered probable.

Rental expense related to operating leases is recognized on a straight-line basis over the lease term. The lease agreements may include both lease and non-lease components. Kodak does not separate lease and non-lease components for real estate leases but does separate lease and non-lease components for equipment leases.

Kodak as Lessor

Kodak places its own equipment at customer sites under sales-type and operating lease arrangements. Arrangements classified as sales-type leases with revenue recognition at inception generally transfer title to the equipment by the end of the lease term or have a lease term that is for a major part of the remaining economic life of the equipment; and collectability is considered probable. Leases meeting the sales-type lease criteria with variable lease payments that do not depend upon a reference rate or index are classified as operating leases if they would otherwise result in a day-one loss. If the arrangement meets the criteria for a sales-type lease but collectability is not considered probable, Kodak will not derecognize the asset and will record all payments received as a liability until the earlier of collectability becoming probable or the termination of the lease. Arrangements that do not meet the sales-type lease criteria are classified as operating leases with revenue recognized over the term. Contracts with customers may include multiple performance obligations including equipment, optional software licenses and service agreements. For such arrangements, revenue is allocated to each performance obligation based on its relative standalone selling price. Equipment subject to operating leases is included in Property, plant and equipment, net in the Consolidated Statement of Financial Position and is depreciated to estimated residual value over its expected useful life. Equipment operating lease terms and depreciable lives generally vary from 3 to 7 years.

The Eastman Business Park segment's core operations are commercial real estate management activities including real estate leasing and related facility management services. Kodak also leases underutilized portions of its other real estate properties to third parties under both operating lease and sublease agreements. Payments received under operating lease agreements as part of the Eastman Business Park segment are recognized on a straight-line basis over the term and are reported in Revenues in the Consolidated Statement of Operations. Payments received under lease and sublease agreements for other underutilized space are recognized on a straight-line basis and reported as cost reductions in Cost of revenues, Selling, general and administrative ("SG&A") expenses, research and development ("R&D") costs and Other charges (income), net.

Renewal options and/or termination options are factored into the determination of lease payments if considered probable. Kodak does not separate lease and non-lease components of contracts for real estate leases but does separate lease and non-lease components for equipment leases.

REVENUE

Kodak's revenue transactions include sales of products (such as components and consumables for use in Kodak and other manufacturers' equipment, film-based products and specialty materials and chemicals), equipment, software, services (such as equipment and software maintenance, engineering, coating and contract manufacturing services), integrated solutions, intellectual property and brand licensing, and commercial real estate management activities. Revenue from services includes extended warranty, customer support and maintenance agreements, consulting, training and education.

Revenue is recognized when control of the promised goods or services is transferred to customers in an amount that reflects the consideration Kodak expects to be entitled to in exchange for those goods or services.

For product sales (such as plates, film, inks, specialty materials and chemicals and other consumables) revenue is recognized when control has transferred from Kodak to the buyer, which may be upon shipment or upon delivery to the customer site, based on contract terms or legal requirements in certain jurisdictions. Equipment and software related service revenue is recognized using the time-based method ratably over the contractual period as it best depicts when the customer receives the benefit from the service. Service revenue for time and materials-based agreements is recognized as services are performed.

Equipment is generally dependent on, and interrelated with, the underlying operating system (firmware) and cannot function without the operating system. In these cases, the hardware and software licenses are accounted for as a single performance obligation. Contracts with customers may include multiple performance obligations including equipment and optional software licenses and service agreements. Service agreements generally have a one-year initial term subject to annual renewals and may be prepaid or paid over-time. For such arrangements, revenue is allocated to each performance obligation based on its relative standalone selling price. Kodak applies the residual allocation method for sales of certain complex, highly customized equipment due to significant variability in pricing. Standalone selling prices are based on the observable prices of the products or services when sold separately or by using expected cost-plus margin when directly observable prices are not available. The Company reassesses its standalone selling prices at least annually.

For non-complex equipment installations and software sales revenue is recognized when control of each distinct performance obligation has transferred from Kodak to the buyer, which is generally met when the equipment or software is delivered and installed at the customer site as delivery and installation generally occur within the same period. For complex equipment installations or integrated software solutions revenue is deferred until receipt of customer acceptance and control has transferred to the buyer.

Software licenses are sold both in bundled equipment arrangements as discussed above or on a stand-alone basis. Perpetual licenses are usually sold with post-contract support services ("PCS") which are considered distinct performance obligations as the customer's use of the existing software is not dependent upon future upgrades. Kodak recognizes software revenue at the time that the customer obtains control over the software which generally occurs upon installation while revenue allocated to the PCS is recognized over the service period. The Company also sells SaaS arrangements with revenue recognized over the contract term.

In service arrangements such as consulting where final acceptance by the customer is required, revenue is deferred until all acceptance criteria have been met and Kodak has a legal right to payment.

Kodak's licensing revenue is comprised of software licenses as discussed above, licenses to use functional intellectual property (e.g. patents and technical know-how) and licenses to use symbolic intellectual property (e.g. brand names and trademarks). The timing and the amount of revenue recognized from the licensing of intellectual property depends upon a variety of factors, including the nature of the performance obligations (functional vs. symbolic licenses), specific terms of each agreement, and the payment terms. Aside from software licenses discussed above, Kodak's functional licenses generally provide the right to use functional intellectual property; therefore, non-sales/usage-based revenue is recognized when the customer has the right to use the intellectual property while sales and usage-based royalties are recognized in the period the related sales and usage occurs. Revenue for symbolic licenses such as brand licenses are recognized over time.

Real estate management revenue consists primarily of income from tenant leases, including rent and utilities, as well as facility management services and hosting onsite events. Usage based revenue is recognized as earned while tenant lease income is recognized on a straight-line basis over the lease term (Refer to Leases; Kodak as Lessor above).

Deferred revenue is recorded when cash payments are received in advance of satisfying performance obligations such as deposits required in advance on equipment orders, prepaid service contracts, prepaid tenant lease income or prepaid royalties on intellectual property arrangements. Interest expense is imputed for payments received greater than one year in advance of performance.

Payment terms and conditions vary by contract type, although terms generally include a requirement of payment within 30 to 60 days. Kodak applies the practical expedient with respect to implied financial components and only imputes interest for payment terms greater than one year.

Sales and usage-based taxes are excluded from revenues.

Certain customers may receive cash-based incentives or credits, which are accounted for as variable consideration. At the time revenue is recognized, Kodak records reductions to revenue for customer incentive programs, rebates and promotional allowances. For those incentives that require estimation, such as for volume rebates, Kodak uses historical experience and both internal and customer data to estimate the sales incentive at the time revenue is recognized.

Incremental direct costs of obtaining a contract consist of sales commissions. Kodak expenses sales commissions when incurred if the amortization period would be one year or less. Capitalized sales commissions are amortized on a straight-line basis over the life of the contract. These costs are recorded in SG&A expenses in the Consolidated Statement of Operations. Kodak accrues the estimated cost of post-sale obligations, including basic product warranties, at the time of revenue recognition.

Kodak does not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less or for which revenue is recognized at the amount to which Kodak has the right to invoice for services performed.

Performance obligations with an original expected length of greater than one year generally consist of deferred service contracts, operating leases and licensing arrangements. As of December 31, 2022, there was approximately \$55 million of unrecognized revenue from unsatisfied performance obligations. Approximately 35% of the revenue from unsatisfied performance obligations is expected to be recognized in 2023, 20% in 2024, 15% in 2025 and 30% thereafter.

RESEARCH AND DEVELOPMENT COSTS

R&D costs, which include costs incurred in connection with new product development, fundamental and exploratory research, process improvement, product use technology and product accreditation, are expensed in the period in which they are incurred.

ADVERTISING

Advertising costs are expensed as incurred and are included in SG&A expenses in the accompanying Consolidated Statement of Operations. Advertising expenses amounted to \$3 million in the year ended 2022 and \$2 million for each of the years ended 2021 and 2020.

SHIPPING AND HANDLING COSTS

Amounts charged to customers and costs incurred by Kodak related to shipping and handling are included in Net revenue and Cost of revenues, respectively.

IMPAIRMENT OF LONG-LIVED ASSETS

The carrying values of long-lived assets, other than goodwill and intangible assets with indefinite useful lives, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying values may not be recoverable.

Long-lived assets are grouped with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities (the asset group). If the sum of the expected undiscounted cash flows from the use of and eventual disposition of such asset group is less than the carrying value of the asset group a loss is recognized to the extent the carrying value of the asset group exceeds its fair value. Kodak determines fair value through quoted market prices in active markets or, if quoted market prices are unavailable, through the performance of internal analyses of discounted cash flows.

The remaining useful lives of long-lived assets are reviewed in connection with the assessment of recoverability of long-lived assets and the ongoing strategic review of the business and operations. If the review indicates that the remaining useful life of the long-lived asset has changed significantly, the depreciation on that asset is adjusted to facilitate full cost recovery over its revised estimated remaining useful life.

The carrying values of indefinite-lived intangible assets are evaluated for potential impairment annually or whenever events or changes in circumstances indicate that it is more likely than not that the asset is impaired. Refer to Note 6, "Goodwill and Other Intangible Assets."

INCOME TAXES

Kodak recognizes deferred tax liabilities and assets for the expected future tax consequences of operating losses, credit carry-forwards and temporary differences between the carrying amounts and tax basis of Kodak's assets and liabilities. Kodak records a valuation allowance to reduce its net deferred tax assets to the amount that is more likely than not to be realized. For discussion of the amounts and components of the valuation allowances as of December 31, 2022 and 2021, refer to Note 18, "Income Taxes."

The undistributed earnings of Kodak's foreign subsidiaries are not considered permanently reinvested. Kodak has recognized a deferred tax liability (net of related foreign tax credits) on the foreign subsidiaries' undistributed earnings.

RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

No accounting pronouncements were adopted in 2022.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In June 2016, the FASB issued ASU 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. ASU 2016-13 (as amended by ASUs 2018-19, 2019-04, 2019-05, 2019-10, 2019-11, 2020-02, 2020-03 and 2022-02) requires a financial asset (or a group of financial assets) measured at amortized cost basis to be presented at the net amount expected to be collected. In addition, the ASU requires credit losses relating to available-for-sale debt securities to be recorded through an allowance for credit losses. The amendments in this ASU broaden the information that an entity must consider in developing its expected credit loss estimate for assets measured either collectively or individually. The ASU is effective for Kodak for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2022 (January 1, 2023 for Kodak). Kodak adopted the new standard on January 1, 2023 and it did not have a material impact on Kodak’s consolidated financial statements.

NOTE 2: CASH, CASH EQUIVALENTS AND RESTRICTED CASH

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the Statement of Financial Position that sums to the total of such amounts shown in the Statement of Cash Flows:

(in millions)	As of December 31,	
	2022	2021
Cash and cash equivalents	\$ 217	\$ 362
Restricted cash reported in Other current assets	7	7
Restricted cash	62	54
Total cash, cash equivalents and restricted cash shown in the Statement of Cash Flows	\$ 286	\$ 423

Restricted cash reported in Other current assets on the Consolidated Statement of Financial Position primarily represents amounts that support hedging activities.

Restricted cash includes \$44 million and \$45 million as of December 31, 2022 and 2021, respectively, representing the cash collateral required to be posted by the Company under the Letter of Credit Facility (“L/C Cash Collateral”) (Refer to Note 9, “Debt and Finance Leases” for information on the Restricted cash supporting the L/C Cash Collateral). In addition, Restricted cash as of December 31, 2022 and 2021 includes an escrow of \$5 million and \$4 million, respectively, in China to secure various ongoing obligations under the agreements for the strategic relationship with Lucky HuaGuang Graphics Co. Ltd. Long-term restricted cash also includes \$6 million and \$3 million of security posted related to Brazilian legal contingencies as of December 31, 2022 and 2021, respectively and \$5 million of cash collateral posted for a letter of credit for aluminum purchases as of December 31, 2022 in the United Kingdom.

NOTE 3: INVENTORIES, NET

(in millions)	As of December 31,	
	2022	2021
Finished goods	\$ 98	\$ 94
Work in process	64	65
Raw materials	75	60
Total	\$ 237	\$ 219

NOTE 4: PROPERTY, PLANT AND EQUIPMENT, NET

(in millions)	As of December 31,	
	2022	2021
Land	\$ 51	\$ 49
Buildings and building improvements	134	130
Machinery and equipment	390	387
Construction in progress	29	15
	604	581
Accumulated depreciation	(450)	(441)
Property, plant and equipment, net	\$ 154	\$ 140

Depreciation expense was \$24 million, \$26 million and \$32 million for the years ended December 31, 2022, 2021 and 2020, respectively.

NOTE 5: OTHER LONG-TERM ASSETS

(in millions)	As of December 31,	
	2022	2021
Preferred equity investment	\$ 25	\$ —
Estimated workers' compensation recoveries	12	18
Long-term receivables	9	11
Other	30	26
Total	\$ 76	\$ 55

The Other component above consists of other miscellaneous long-term assets that, individually, were less than 5% of the total assets component in the accompanying Consolidated Statement of Financial Position, and therefore have been aggregated in accordance with Regulation S-X.

NOTE 6: GOODWILL AND OTHER INTANGIBLE ASSETS

The following table presents the changes in the carrying value of goodwill by reportable segment.

(in millions)	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Consolidated Total
As of December 31, 2020					
Goodwill	\$ 56	\$ 6	\$ 14	\$ —	\$ 76
Accumulated impairment losses	(56)	—	(8)	—	(64)
Goodwill reallocation	—	—	(6)	6	—
Balance as of December 31, 2020	—	6	—	6	12
Impairment	—	—	—	—	—
As of December 31, 2021	—	6	—	6	12
Impairment	—	—	—	—	—
As of December 31, 2022	\$ —	\$ 6	\$ —	\$ 6	\$ 12
Goodwill	\$ 56	\$ 6	\$ 8	\$ 6	\$ 76
Accumulated impairment losses	(56)	—	(8)	—	(64)
Balance as of December 31, 2022	\$ —	\$ 6	\$ —	\$ 6	\$ 12

The Digital Printing segment has three goodwill reporting units: Electrophotographic Printing Solutions; Prosper and Versamark; and Software. The Advanced Materials and Chemicals segment has two goodwill reporting units: Motion Picture and Industrial Films and Chemicals; and Advanced Materials and Functional Printing. The Traditional Printing segment and Brand segment each have one goodwill reporting unit. As of December 31, 2022, goodwill is only recorded in the Brand and Software reporting units.

Kodak performed interim tests of impairment for goodwill as of June 30, 2020 due to the uncertainty regarding the negative impact of the COVID-19 pandemic on its operations, and as of March 31, 2020, due to the decline in market capitalization as of that date since the last goodwill impairment test (December 31, 2019) and the uncertainty regarding the negative impact of the COVID-19 pandemic at that time.

Based on the results of the June 30, 2020 and March 31, 2020 analyses, no impairment of goodwill was indicated. No interim impairment tests for goodwill were required to be performed for any other interim periods in the years ended December 31, 2022, 2021 or 2020.

Based upon the results of Kodak's December 31, 2022 and 2021 annual impairment tests, no impairment of goodwill is indicated. As of December 31, 2022 and 2021 the Brand reporting unit had negative carrying value.

The gross carrying amount and accumulated amortization by major intangible asset category as of December 31, 2022 and 2021 were as follows:

As of December 31, 2022					
(in millions)	Gross Carrying	Accumulated		Weighted Average Remaining Amortization Period (in years)	
	Amount	Amortization	Net		
Technology-based	\$ 99	\$ 88	\$ 11		3 years
Kodak trade name	17	—	17		Indefinite life
Customer-related	9	9	—		1 year
Total	\$ 125	\$ 97	\$ 28		

As of December 31, 2021					
(in millions)	Gross Carrying	Accumulated		Weighted Average Remaining Amortization Period (in years)	
	Amount	Amortization	Net		
Technology-based	\$ 99	\$ 84	\$ 15		4 years
Kodak trade name	18	—	18		Indefinite life
Customer-related	9	8	1		2 years
Total	\$ 126	\$ 92	\$ 34		

In the first quarter of 2020, due to the uncertainty regarding the negative impact of the COVID-19 pandemic at that time, Kodak performed an interim test of impairment for the Kodak trade name. Based on the result of the interim impairment test, Kodak concluded the carrying value of the Kodak trade name exceeded its fair value. Pre-tax impairment charges of \$3 million are included in Other operating income, net for the year ended December 31, 2020 in the Consolidated Statement of Operations. Kodak also performed an interim test of impairment for the Kodak trade name as of June 30, 2020 due to the uncertainty regarding the negative impact of the COVID-19 pandemic. Based on the result of the interim impairment test as of June 30, 2020, Kodak concluded the fair value of the Kodak trade name exceeded its carrying value resulting in no additional impairment. No interim impairment tests for the Kodak tradename were required to be performed for any other interim periods in the years ended December 31, 2022, 2021 or 2020.

The annual and interim impairment tests of the Kodak trade name use the income approach, specifically the relief from royalty method.

Based on the results of Kodak's December 31, 2022 annual impairment test, the carrying value of the Kodak trade name exceeded its fair value and Kodak recorded a pre-tax impairment charge of \$1 million driven by lower forecasted revenues primarily associated with the decision to cease manufacturing of the Electrophotographic Printing Solutions equipment products. The \$1 million impairment charge is included in Other operating income, net for the year ended December 31, 2022 in the Consolidated Statement of Operations. No impairment of the Kodak trade name was indicated as of December 31, 2021.

Amortization expense related to intangible assets was \$5 million for each of the years ended December 31, 2022, 2021 and 2020.

Estimated future amortization expense related to intangible assets that are currently being amortized as of December 31, 2022 was as follows:

(in millions)	
2023	\$ 4
2024	4
2025	3
Total	<u>\$ 11</u>

NOTE 7: OTHER CURRENT LIABILITIES

(in millions)	As of December 31,	
	2022	2021
Deferred revenue and customer deposits	\$ 40	\$ 43
Employment-related liabilities	35	34
Customer rebates	18	21
Workers' compensation	9	7
Restructuring liabilities	7	5
Accrued interest	6	5
Preferred Stock dividends payable	1	1
Other	27	26
Total	<u>\$ 143</u>	<u>\$ 142</u>

The customer rebate amounts will potentially be settled through customer deductions applied to outstanding trade receivables in lieu of cash payments.

The Other component above consists of other miscellaneous current liabilities that, individually, were less than 5% of the total current liabilities component within the Consolidated Statement of Financial Position and therefore have been aggregated in accordance with Regulation S-X.

NOTE 8: OTHER LONG-TERM LIABILITIES

(in millions)	As of December 31,	
	2022	2021
Workers' compensation	\$ 59	\$ 83
Asset retirement obligations	43	42
Deferred taxes	27	29
Deferred brand licensing revenue	11	14
Environmental liabilities	8	9
Embedded conversion option derivative liabilities	4	7
Other	19	21
Total	<u>\$ 171</u>	<u>\$ 205</u>

The Other component above consists of other miscellaneous long-term liabilities that, individually, were less than 5% of the total liabilities component in the accompanying Consolidated Statement of Financial Position and therefore have been aggregated in accordance with Regulation S-X.

NOTE 9: DEBT AND FINANCE LEASES

Debt and finance leases and related maturities and interest rates were as follows at December 31, 2022 and 2021:

(in millions)	Type	Maturity	Weighted-Average Effective Interest Rate	As of December 31,	
				2022 Carrying Value	2021 Carrying Value
Current portion:					
	RED-Rochester, LLC		11.45%	\$ 1	\$ 1
				1	1
Non-current portion:					
	Term notes	2026	13.74%	286	224
	Convertible debt	2026	17.24%	18	15
	RED-Rochester, LLC	2033	11.45%	11	12
	Finance leases	Various	Various	1	1
	Other debt	Various	Various	—	1
				316	253
				\$ 317	\$ 254

Annual maturities of debt and finance leases outstanding at December 31, 2022 were as follows:

(in millions)	Carrying Value	Maturity Value
2023	\$ 1	\$ 1
2024	2	2
2025	1	1
2026	304	366
2027	1	1
2028 and thereafter	8	8
Total	\$ 317	\$ 379

Term Loan Credit Agreement

On February 26, 2021, the Company entered into a Credit Agreement (the "Term Loan Credit Agreement") with certain funds affiliated with Kennedy Lewis Investment Management LLC ("KLIM") as lenders (the "Term Loan Lenders") and Alter Domus (US) LLC, as administrative agent. Pursuant to the Term Loan Credit Agreement, the Term Loan Lenders provided the Company with (i) an initial term loan in the amount of \$225 million, which was drawn in full on the same date, and (ii) a commitment to provide delayed draw term loans in an aggregate principal amount of up to \$50 million on or before February 26, 2023 (collectively, the "Term Loans"). Net proceeds from the Term Loan Credit Agreement were \$215 million (\$225 million aggregate principal less \$10 million in debt transaction costs). The delayed draw term loans were drawn down in full on June 15, 2022. Net proceeds received on June 15, 2022 were \$49 million (\$50 million of aggregate principal less \$1 million in debt transaction costs). The maturity date of the Term Loans is February 26, 2026 and the Term Loans are non-amortizing.

The Term Loans bear interest at a rate of 8.5% per annum payable quarterly in cash and 4.0% per annum Paid-In-Kind interest ("PIK") or in cash, at the Company's option, for an aggregate interest rate of 12.5% per annum. The Company elected the 4.0% per annum in PIK which is added to the carrying value of the debt through the term. Interest expense is recorded using the effective interest method.

The Term Loans are guaranteed by the Company and certain of its domestic subsidiaries (the “Subsidiary Guarantors”), and are secured by (i) a first priority lien on substantially all assets of the Company and the Subsidiary Guarantors (subject to certain exceptions) not constituting ABL Priority Collateral or L/C Cash Collateral (see below for definitions of ABL Priority Collateral and L/C Cash Collateral), including 100% of the stock of material U.S. subsidiaries and 65% of the stock of material foreign subsidiaries (the “Term Loan Priority Collateral”) and (ii) a third priority lien on the ABL Priority Collateral and L/C Cash Collateral. The aggregate carrying value of the Term Loan Priority Collateral, ABL Priority Collateral and L/C Cash Collateral as of December 31, 2022 was \$2,457 million.

The Term Loan Credit Agreement limits, among other things, the ability of the Company and its Restricted Subsidiaries (as defined in the Term Loan Credit Agreement) to (i) incur indebtedness, (ii) incur or create liens, (iii) dispose of assets, (iv) make restricted payments (including dividend payments, et al.) and (v) make investments. The Term Loan Credit Agreement does not include a financial maintenance covenant or any subjective acceleration clauses. The Term Loan Credit Agreement does contain customary affirmative covenants including delivery of certain of the Company’s financial statements and customary event of default provisions, including a cross-default provision that would give rise to an event of default if there is a default under or acceleration of “Material Indebtedness”. Material Indebtedness includes obligations having a principal amount of at least \$25 million and obligations under the ABL Facility or Letter of Credit Facility.

On an annual basis, the Company will prepay, within 10 business days following the filing of annual Form 10-K, outstanding Loans in an amount equal to Excess Cash Flow (“ECF”) as defined in the Term Loan Credit Agreement provided no such prepayment is required if such prepayment would cause U.S. liquidity to be less than \$85 million. For the year ended December 31, 2022 ECF was a negative amount, therefore no prepayment is required in 2023.

Board Rights Agreement

On February 26, 2021, in connection with the execution of the Term Loan Credit Agreement, the Company entered into a letter agreement with KLIM (the “Board Rights Agreement”). Pursuant to the Board Rights Agreement, the Company’s Board of Directors (“Board”) appointed an individual designated by KLIM as a member of the Board effective April 1, 2021. The individual appointed was elected to serve one-year terms at the annual meetings on May 19, 2021 and May 18, 2022. KLIM has the right to nominate one director at each annual or special meeting of the Company’s shareholders until the third anniversary of the execution of the Board Rights Agreement or until KLIM ceases to hold at least 50% of the original principal amount of the Term Loans and commitments under the Term Loan Credit Agreement, whichever is earlier.

Until KLIM ceases to hold at least 50% of the original principal amount of the Term Loans and commitments under the Term Loan Credit Agreement, at any time that KLIM’s designated director is not serving on the Board, KLIM will have the right to designate a non-voting observer to the Board. Such observer will have the right to attend meetings of the Board and, under certain circumstances, committees and subcommittees of the Board and to receive information and materials made available to the Board, in each case, subject to certain restrictions and exceptions.

Securities Purchase Agreement

On February 26, 2021, the Company and the Term Loan Lenders (the “Buyers”), entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) pursuant to which the Company sold to the Buyers (i) an aggregate of 1,000,000 shares (the “Purchased Shares”) of the Company’s common stock, par value \$0.01 per share (“Common Stock”) for a purchase price of \$10.00 in cash per share for an aggregate purchase price of \$10 million and (ii) \$25 million aggregate principal amount of the Company’s newly issued 5.0% unsecured convertible promissory notes due May 28, 2026 (the “2021 Convertible Notes”) in a private placement transaction. The issuance and sale of the Purchased Shares and 2021 Convertible Notes were consummated on February 26, 2021.

2021 Convertible Notes

The 2021 Convertible Notes bear interest at a rate of 5.0% per annum, which will be payable in cash on the maturity date and in additional shares of Common Stock on any conversion date. The payment of interest only at the maturity date has the same effect as delivering additional debt instruments to the Holders of the 2021 Convertible Notes and therefore is considered PIK. Therefore, PIK will be added to the carrying value of the debt through the term and interest expense will be recorded using the effective interest method. The maturity date of the 2021 Convertible Notes is May 28, 2026.

Conversion Features

The Buyers have the right to elect at any time to convert the 2021 Convertible Notes into shares of Common Stock at an initial conversion rate equal to 100 shares of Common Stock per each \$1,000 principal amount of the 2021 Convertible Notes (based on an initial conversion price equal to \$10.00 per share of Common Stock). The conversion rate and conversion price is subject to certain customary anti-dilution adjustments. If the closing price of the Common Stock equals or exceeds \$14.50 (subject to adjustment in the same manner as the conversion price) for 45 trading days within any period of 60 consecutive trading days, the Company has the right to cause the mandatory conversion of the 2021 Convertible Notes into shares of Common Stock.

In the event of certain fundamental transactions, the Buyers have the right, within a period of 30 days following the occurrence of such transaction (“Holder Fundamental Transaction Election Period”), to elect to either require prepayment of the 2021 Convertible Notes at par plus accrued and unpaid interest or convert all or a portion of the 2021 Convertible Notes into shares of Common Stock at the conversion rate then in effect plus any additional shares based on the price per share of Common Stock in connection with the fundamental transaction, or to receive the shares of a successor entity, if any.

Embedded Derivatives

The 2021 Convertible Notes were considered more akin to a debt-type instrument and the economic characteristics and risks of the embedded conversion features are not considered clearly and closely related to the 2021 Convertible Notes. Accordingly, these embedded features were bifurcated from the 2021 Convertible Notes and separately accounted for on a combined basis at fair value as a single derivative liability. Kodak allocated \$12 million of the net proceeds received to a derivative liability based on the aggregate fair value of the embedded features on the date of issuance which reduced the net carrying value of the 2021 Convertible Notes. The derivative is being accounted for at fair value with subsequent changes in the fair value being reported as part of Other charges (income), net in the Consolidated Statement of Operations. The fair value of the Convertible Notes embedded derivative as of December 31, 2022 and 2021 was a liability of \$2 million and \$4 million, respectively, and is included in Other long-term liabilities in the accompanying Consolidated Statement of Financial Position. Refer to Note 14, “Financial Instruments” for information on the valuation of the derivative.

The carrying value of the 2021 Convertible Notes at December 31, 2022 and 2021 was \$18 million and \$15 million, respectively. The estimated fair value of the 2021 Convertible Notes as of December 31, 2022 and 2021 was \$16 million and \$18 million, respectively (Level 3). The carrying value is being accreted to the aggregate principal amount using the effective interest method from the date of issuance through the maturity date.

Securities Registration Rights Agreement

On February 26, 2021, the Company and the Buyers entered into a Registration Rights Agreement (the “Securities Registration Rights Agreement”) providing the Buyers with registration rights in respect of the Purchased Shares and the Common Stock issuable upon conversion of the 2021 Convertible Notes. The Securities Registration Rights Agreement contains other customary terms and conditions, including certain customary indemnification obligations; however, the Securities Registration Rights Agreement does not obligate the Company to facilitate an underwritten offering of the registered Common Stock by the Buyers.

Amended and Restated ABL Credit Agreement

On September 3, 2013, the Company entered into an Asset Based Revolving Credit Agreement (the “Original ABL Credit Agreement”). On May 26, 2016, the Company and the subsidiaries of the Company that are guarantors (the “Subsidiary Guarantors”) entered into an Amended and Restated Credit Agreement (the “ABL Credit Agreement”) with the lenders party thereto, Bank of America, N.A., as administrative and collateral agent, and Bank of America, N.A. and JPMorgan Chase Bank, N.A., as joint lead arrangers and joint bookrunners, which amended and restated the Original ABL Credit Agreement.

The ABL Credit Agreement provided that the Lenders make available asset-based revolving loans (the “ABL Loans”) and letters of credit in an aggregate amount of up to \$150 million, subject to the Borrowing Base.

On January 27, 2020 Kodak exercised its right under the ABL Credit Agreement to permanently reduce lender commitments from \$150 million to \$120 million. As a result, the minimum Excess Availability decreased to \$15 million from the previous minimum of \$18.75 million.

On March 27, 2020, the Company and the Subsidiary Guarantors entered into Amendment No. 3 to the ABL Credit Agreement (the “Amendment”) with the lenders party thereto (the “Lenders”), Bank of America, N.A., as administrative and collateral agent, and Bank of America, N.A. and each of the parties to the ABL Credit Agreement as lenders.

Each of the capitalized but undefined terms used in the context of describing the ABL Credit Agreement and the Amendment has the meaning ascribed to such term in the ABL Credit Agreement and the Amendment.

The Amendment decreased the available ABL Loans and letters of credit from an aggregate amount of up to \$120 million to \$110 million, subject to the Borrowing Base. As a result of the additional reduction in lender commitments, the minimum Excess Availability decreased to \$13.75 million from the previous amount of \$15 million.

The Amendment also changed Equipment Availability from (i) the lesser of 75% of Net Orderly Liquidation Value of Eligible Equipment or \$6 million to (ii) the lesser of 70% of Net Orderly Liquidation Value of Eligible Equipment or \$14.75 million as of March 31, 2020. The \$14.75 million amount decreases by \$1 million per quarter starting on July 1, 2020 until maturity or the amount is decreased to \$0, whichever comes first.

On February 26, 2021, the Company and the Subsidiary Guarantors entered into a fourth amendment to the ABL Credit Agreement (as amended in 2021, the "Amended ABL Credit Agreement"), among the Company, the Subsidiary Guarantors, the lenders party thereto, Bank of America, N.A., as agent (the "Agent"), and Bank of America, N.A. and JPMorgan Chase Bank, N.A., as arrangers, with the Agent and the Required Lenders. Each of the capitalized but undefined terms used in the context of describing the Amended ABL Credit Agreement has the meaning ascribed to such term in the Amended ABL Credit Agreement.

The Amended ABL Credit Agreement amends the ABL Credit Agreement to, among other things, (i) extend the maturity date to February 26, 2024 or the date that is 90 days prior to the earliest scheduled maturity date or mandatory redemption date of any of the Company's Term Loans, 2021 Convertible Notes, Series B Preferred Stock, Series C Preferred Stock or any refinancings of any of the foregoing and (ii) decrease the aggregate amount of commitments from \$110 million to \$90 million, which decreased the minimum Excess Availability to \$11.25 million from the previous amount of \$13.75 million. Commitments under the Amended ABL Credit Agreement continue to be able to be used in the form of revolving loans or letters of credit. The Company issued approximately \$58 million and \$46 million letters of credit under the Amended ABL Credit Agreement as of December 31, 2022 and 2021, respectively.

The revolving loans bear interest at the rate of LIBOR plus 3.50%-4.00% per annum (subject to provisions providing for a replacement benchmark rate upon the discontinuation of LIBOR) or a floating Base Rate (as defined in the Amended ABL Credit Agreement) plus 2.50%-3.00% per annum, based on Excess Availability (as defined in the Amended ABL Credit Agreement). The Company will pay an unused line fee of 37.5-50 basis points per annum, depending on whether the unused portion of the maximum amount available is less than or equal to 50% or greater than 50%, respectively. The Company will pay a letter of credit fee of 3.50%-4.00% per annum, based on Excess Availability, on issued and outstanding letters of credit, in addition to a fronting fee of 25 basis points on such letters of credit.

Obligations under the Amended ABL Credit Agreement continue to be secured by: (i) a first priority lien on assets of the Company and the Subsidiary Guarantors constituting cash (other than L/C Cash Collateral, as defined below), accounts receivable, inventory, machinery and equipment and certain other assets (the "ABL Priority Collateral") and (ii) a second priority lien on substantially all assets of the Company and the Subsidiary Guarantors (subject to certain exceptions) other than the ABL Priority Collateral, including the L/C cash collateral and 100% of the stock of material U.S. subsidiaries and 65% of the stock of material foreign subsidiaries.

The Amended ABL Credit Agreement continues to limit, among other things, the ability of the Company and its Restricted Subsidiaries (as defined in the Amended ABL Credit Agreement) to (i) incur indebtedness, (ii) incur or create liens, (iii) dispose of assets, (iv) make restricted payments and (v) make investments. The Amended ABL Credit Agreement leaves in place customary affirmative covenants, including delivery of certain of the Company's financial statements set forth therein.

Under the Amended ABL Credit Agreement the Company is required to maintain Minimum Liquidity of at least \$80 million, which is tested at the end of each quarter. Minimum Liquidity was \$150 million and \$250 million at December 31, 2022 and 2021, respectively. If Minimum Liquidity falls below \$80 million an Event of Default would occur, in which case the Agent would have the right to declare the obligation of each Lender to make Revolving Loans and of the Issuing Banks to issue Letters of Credit to be terminated, and declare the Revolving Loans, all interest thereon and all other amounts payable under the Amended ABL Credit Agreement to be due and payable.

Under both the Amended ABL Credit Agreement and the ABL Credit Agreement the Company is required to maintain Excess Availability above 12.5% of lender commitments (\$11.25 million at both December 31, 2022 and 2021), which is tested at the end of each month. Excess Availability was \$21 million and \$27 million as of December 31, 2022 and 2021, respectively.

If Excess Availability falls below 12.5% of lender commitments a Fixed Charge Coverage Ratio Trigger Event would occur. During any Fixed Charge Coverage Ratio Trigger Event, the Company would be required to maintain a Fixed Charge Coverage Ratio of greater than or equal to 1.0 to 1.0. If Excess Availability falls below 12.5% of lender commitments, Kodak may, in addition to the requirement to be in compliance with the minimum Fixed Charge Coverage Ratio, become subject to cash dominion control. Since Excess Availability was greater than 12.5% of lender commitments at December 31, 2022 and 2021, Kodak was not required to have a minimum Fixed Charge Coverage Ratio of 1.0 to 1.0.

If Excess Availability falls below 12.5% of lender commitments and the Fixed Charge Coverage Ratio is less than 1.0 to 1.0, an Event of Default would occur and the Agent would have the right to declare the obligation of each Lender to make Revolving Loans and of the Issuing Banks to issue Letters of Credit to be terminated, and declare the Revolving Loans, all interest thereon and all other amounts payable under the Amended ABL Credit Agreement to be due and payable.

Each existing direct or indirect U.S. subsidiary of the Company (other than Immaterial Subsidiaries, Unrestricted Subsidiaries and certain other subsidiaries) has provided an unconditional guarantee (and any such future subsidiaries must provide an unconditional guarantee) of the obligations of the Company under the Credit Agreements.

Under the terms of the ABL Credit Agreement, the Company may designate Restricted Subsidiaries as Unrestricted Subsidiaries provided the aggregate sales of all Unrestricted Subsidiaries are less than 7.5% of the consolidated sales of Kodak and the aggregate assets of all Unrestricted Subsidiaries are less than 7.5% of Kodak's consolidated assets. Further, on a pro forma basis at the time of designation and immediately after giving effect thereto, Excess Availability must be at least \$30 million and the pro forma Fixed Charge Coverage Ratio must be no less than 1.0 to 1.0. Upon designation of Unrestricted Subsidiaries, the Company is required to provide to the Lenders reconciling statements to eliminate all financial information pertaining to Unrestricted Subsidiaries which is included in its annual and quarterly consolidated financial statements.

In March 2018, the Company designated five subsidiaries as Unrestricted Subsidiaries: Kodak PE Tech, LLC, Kodak LB Tech, LLC, Kodak Realty, Inc, Kodakit Singapore Pte. Limited and KP Services (Jersey) Ltd. This action allowed the Company to better position assets which may be monetized in the future and address costs related to underutilized properties. In 2020 Kodak discontinued the operation of Kodakit Singapore Pte. Limited and sold the assets and liabilities of Kodak LB Tech, LLC in an intercompany transaction.

Under the Amended ABL Credit Agreement the Company designated three subsidiaries as Unrestricted Subsidiaries: Kodak PE Tech, LLC, Kodak Realty, Inc, and KP Services (Jersey) Ltd. Collectively, the Unrestricted Subsidiaries had sales of approximately \$6 million, \$7 million and \$6 million for the years ended December 31, 2022, 2021 and 2020, respectively, which represented 1% of Kodak's consolidated sales for each period. These subsidiaries had assets of \$12 million and \$13 million as of December 31, 2022 and 2021, respectively, which represented 1% of Kodak's consolidated assets as of such dates.

The Amended ABL Credit Agreement limits, among other things, the Company's and the Subsidiary Guarantors' ability to (i) incur indebtedness, (ii) incur or create liens, (iii) dispose of assets, (iv) make restricted payments (including dividend payments, et al.) and (v) make investments. In addition to other customary affirmative covenants, the Amended ABL Credit Agreement provides for a periodic delivery by the Company of its various financial statements as set forth in the Amended ABL Credit Agreement. Events of default under the ABL Credit Agreement include, among others, failure to pay any principal, interest or other amount due under the applicable agreement, breach of specific covenants and a change of control of the Company. Upon an event of default, the lenders may declare the outstanding obligations under the Amended ABL Credit Agreement to be immediately due and payable and exercise other rights and remedies provided for in the agreement.

On March 14, 2023, the Company entered into an amendment to the Amended ABL Credit Agreement (the "2023 Amended ABL Credit Agreement") and Letter of Credit Facility Agreement (the "2023 Amended L/C Facility Agreement") to, among other things: (i) extend the maturity date from February 26, 2024 to the earliest of June 12, 2024, the termination of the 2023 Amended L/C Facility Agreement or the 2023 Amended ABL Credit Agreement, as applicable, or the date that is 91 days prior to the earliest scheduled maturity date or mandatory redemption date of any of the Company's Term Loans, 2021 Convertible Notes, Series B Preferred Stock, Series C Preferred Stock or any refinancings of any of the foregoing; (ii) maintain daily Minimum Liquidity of \$50 million, subject to certain cure rights, in addition to maintaining the existing quarterly Minimum Liquidity of \$80 million, and (iii) on February 26, 2024, decrease the aggregate amount of commitments from \$90 million to \$81 million.

Letter of Credit Facility Agreement

On February 26, 2021, the Company and the Subsidiary Guarantors entered into a Letter of Credit Facility Agreement (the “L/C Facility Agreement”, and together with the Term Loan Credit Agreement and the Amended ABL Credit Agreement the “Credit Agreements”) among the Company, the Subsidiary Guarantors, the lenders party thereto (the “L/C Lenders”), Bank of America, N.A., as agent, and Bank of America, N.A., as issuing bank. Pursuant to the L/C Facility Agreement, the L/C Lenders committed to issue letters of credit on the Company’s behalf in an aggregate amount of up to \$50 million, provided that the Company posts cash collateral in an amount greater than or equal to 103% of the aggregate amount of letters of credit issued and outstanding at any given time (the “L/C Cash Collateral”).

The term of the L/C Facility Agreement is three years, subject to the same automatic springing maturity as the Amended ABL Credit Agreement. The Company issued approximately \$43 million and \$44 million letters of credit under the L/C Facility Agreement as of December 31, 2022 and 2021, respectively. The balance on deposit in the L/C Cash Collateral account as of December 31, 2022 and 2021 is approximately \$44 million and \$45 million, respectively, of which \$14 million was deposited into the L/C Cash Collateral account from proceeds of the financing transactions described herein and the remainder of which was cash collateral previously used to secure letters of credit under the ABL Credit Agreement. The L/C Facility Agreement has the same requirement to maintain Minimum Liquidity of \$80 million as is contained in the Amended ABL Credit Agreement.

The Company will pay an unused line fee of 37.5-50 basis points per annum, depending on whether the unused portion of the maximum commitments is less than or equal to 50% or greater than 50% of such commitments, respectively. The Company will pay a letter of credit fee of 3.75% per annum on issued and outstanding letters of credit, in addition to a fronting fee of 25 basis points on such letters of credit. Amounts drawn under any letter of credit will be reimbursed from the L/C Cash Collateral. If not so reimbursed, and not otherwise repaid by the Company to the applicable L/C Lenders, such amounts will accrue interest, to be paid monthly, at a floating Base Rate (as defined in the L/C Facility Agreement) plus 2.75% per annum until repaid.

As with the Amended ABL Credit Agreement and the ABL Credit Agreement, the L/C Facility Agreement also requires the Company to maintain Excess Availability above 12.5% of lender commitments. If Excess Availability falls below 12.5% of lender commitments a Fixed Charge Coverage Ratio Trigger Event would occur under the L/C Facility Agreement as well as the Amended ABL Credit Agreement and the ABL Credit Agreement. During any Fixed Charge Coverage Ratio Trigger Event, the Company would be required to maintain a Fixed Charge Coverage Ratio of greater than or equal to 1.0 to 1.0.

The Company’s obligations under the L/C Facility Agreement are guaranteed by the Subsidiary Guarantors and are secured by (i) a first priority lien on the L/C Cash Collateral, (ii) a second priority lien on the ABL Priority Collateral and (iii) a third priority lien on the Term Loan Priority Collateral.

RED-Rochester, LLC

In January 2019 Kodak entered into a series of agreements with RED-Rochester, LLC (“RED”), which provides utilities to Eastman Business Park. Kodak received a payment of \$14 million from RED. Kodak is required to pay a minimum annual payment to RED of approximately \$2 million regardless of utility usage. Kodak is accounting for the \$14 million payment from RED as debt. The minimum payments required under the agreement from Kodak to RED are reported as a reduction of the debt and interest expense using the effective interest method. The debt payments to RED continue until August 2033.

2019 Convertible Notes

On May 20, 2019, the Company and Lingle Partners Small Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust, which are investment funds managed by Southeastern Asset Management, Inc. (the “2019 Notes Purchasers”), entered into a Notes Purchase Agreement pursuant to which the Company agreed to issue and sell to the Notes Purchasers, and the Notes Purchasers agreed to purchase from the Company, \$100 million aggregate principal amount of the Company’s 2019 Convertible Notes due 2021.

The transaction closed on May 24, 2019. The proceeds were used to repay the remaining first lien term loans outstanding (\$83 million) under the Company's term credit agreement, which was terminated with the repayment. The remaining proceeds were used for general corporate purposes. The maturity date of the 2019 Convertible Notes was November 1, 2021.

The 2019 Convertible Notes interest rate was 5.00% per annum, payable in cash on their maturity date (PIK interest) and, at the option of the Company, in either cash or additional shares of Common Stock on any conversion date. Therefore, PIK was added to the carrying value of the debt through the term and interest expense was recorded using the effective interest method.

On July 29, 2020, the Company received conversion notices from holders of the 2019 Convertible Notes exercising their rights to convert an aggregate of \$95 million of principal amount of the 2019 Convertible Notes (the "Initial Converted Notes") into shares of Common Stock. Under the terms of the 2019 Convertible Notes, the conversion date of the Initial Converted Notes was July 29, 2020 (the "Initial Conversion Date") and the Company was obligated to deliver an aggregate of 29,922,956 shares of Common Stock (the "Initial Conversion Shares") to the holders of the Initial Converted Notes within five trading days after the Initial Conversion Date. The Company issued the Initial Conversion Shares on August 3, 2020 and paid the \$5.6 million of accumulated interest on the Initial Converted Notes in cash. As a result, the Company's obligations under the Initial Converted Notes were fully discharged and the remaining outstanding principal amount of the 2019 Convertible Notes was \$5 million.

On September 30, 2020, the Company announced its election to mandatorily convert the remaining \$5 million outstanding principal amount of the 2019 Convertible Notes (the "Mandatory Converted Notes") into shares of Common Stock. The conversion of the Mandatory Converted Notes was effective on September 30, 2020 (the "Mandatory Conversion Date"). The Company issued 1,574,892 shares of Common Stock to the holder of the Mandatory Converted Notes on September 30, 2020 (the "Mandatory Conversion Shares"). The Company paid the accrued interest on the Mandatory Converted Notes in the form of cash and interest ceased to accrue on the Mandatory Converted Notes on the Mandatory Conversion Date. As a result of the conversion of all the 2019 Convertible Notes, the lien granted by the Company on certain of its assets to secure the 2019 Convertible Notes was released.

Embedded Derivatives

The 2019 Convertible Notes were considered more akin to a debt-type instrument and the economic characteristics and risks of the embedded conversion features and term extension at the Company's option were not considered clearly and closely related to the 2019 Convertible Notes. Accordingly, these embedded features were bifurcated from the 2019 Convertible Notes and separately accounted for on a combined basis at fair value as a single derivative liability. Kodak allocated \$14 million of the net proceeds received to a derivative liability based on the aggregate fair value of the embedded features and term extension on the date of issuance which reduced the net carrying value of the 2019 Convertible Notes. The derivative was being accounted for at fair value with subsequent changes in the fair value being reported as part of Other charges (income), net in the Consolidated Statement of Operations.

The carrying value of the 2019 Convertible Notes at the time of issuance, \$84 million (\$100 million aggregate gross proceeds less \$14 million allocated to the derivative liability and \$2 million in transaction costs), was being accreted to the face amount using the effective interest method from the date of issuance through the maturity date.

Loss on Early Extinguishment

The calculation of the loss on early extinguishment of debt for the 2019 Convertible Notes when converted in 2020 is shown below:

(in millions)		
Fair value of Initial Conversion Shares	\$	506
Fair value of Mandatory Conversion Shares		13
Carrying value of 2019 Convertible Notes		(92)
Fair value of pro-rata share of embedded derivatives at Initial Conversion Date		(416)
Fair value of pro-rata share of embedded derivatives at Mandatory Conversion Date		(9)
Total	\$	<u>2</u>

NOTE 10: REDEEMABLE, CONVERTIBLE PREFERRED STOCK

Redeemable convertible preferred stock was as follows:

(in millions)	December 31, 2022	December 31, 2021
Series B preferred stock	\$ 95	\$ 94
Series C preferred stock	108	102
Total	\$ 203	\$ 196

Series A Preferred Stock

On November 15, 2016, the Company issued 2,000,000 shares of 5.50% Series A Preferred Stock, no par value per share, for an aggregate purchase price of \$200 million, or \$100 per share pursuant to a Series A Preferred Stock Purchase Agreement (the "Series A Purchase Agreement") with Southeastern Asset Management, Inc. ("Southeastern") and Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust, which are investment funds managed by Southeastern (such investment funds, collectively, the "Series A Purchasers"), dated November 7, 2016. The Company received net proceeds of \$198 million after issuance costs.

The Company classified the Series A Preferred Stock as temporary equity in the Consolidated Statement of Financial Position.

Redemption Features

If any shares of Series A Preferred Stock had not been converted prior to the fifth anniversary of the initial issuance of the Series A Preferred Stock, the Company would have been required to redeem such shares at \$100 per share plus the amount of accrued and unpaid dividends. As the Company concluded that the Series A Preferred Stock was considered more akin to a debt-type instrument, the redemption feature was considered to be clearly and closely related to the host contract and therefore was not required to be separated from the Series A Preferred Stock.

Repurchase and Exchange Agreement

On February 26, 2021 the Company entered into a Series A Preferred Stock Repurchase and Exchange Agreement (the "Repurchase and Exchange Agreement") with Southeastern and the Purchasers. The Company repurchased one million shares of the Series A Preferred Stock under the terms of the Repurchase and Exchange Agreement for \$100,641,667, representing the liquidation value of the Series A Preferred Stock plus accrued and unpaid dividends. In addition, the Company and the Purchasers agreed to exchange the remaining one million shares of Series A Preferred Stock held by the Purchasers for shares of the Company's newly created 4.0% Series B Convertible Preferred Stock, no par value (the "Series B Preferred Stock") on a one-for-one basis plus accrued and unpaid dividends of \$641,667. The exchange of shares of Series A Preferred Stock for shares of Series B Preferred Stock was a noncash financing activity.

Embedded Conversion Features

Each share of Series A Preferred Stock was convertible, at the option of each holder at any time, into shares of Common Stock at the initial conversion rate of 5.7471 (equivalent to an initial conversion price of \$17.40 per share of Common Stock). If a holder elected to convert any shares of Series A Preferred Stock during a specified period in connection with a fundamental change (as defined in the Certificate of Designations), the conversion rate would have been adjusted under certain circumstances and such holder would also have been entitled to a payment in respect of accumulated dividends. If a holder elected to convert any shares of Series A Preferred Stock during a specified period following a reorganization event (as defined in the Certificate of Designations), such holder could have elected to have the conversion rate adjusted. In addition, the Company had the right to require holders to convert any shares of Series A Preferred Stock in connection with certain reorganization events, in which case the conversion rate would have been adjusted under certain circumstances. If shares of Series A Preferred Stock were not converted in connection with a reorganization event, such shares would have become convertible into the exchanged property from the reorganization event.

The Company had the right to convert Series A Preferred Stock into Common Stock at any time after the second anniversary of the initial issuance if the closing price of the Common Stock equaled or exceeded 125 percent of the then-effective conversion price for 45 trading days within a period of 60 consecutive trading days, with the last trading day of such 60 day period ending on the trading day immediately preceding the business day on which the Company issues a press release announcing the mandatory conversion.

Kodak allocated \$43 million of the net proceeds from the issuance of the Series A Stock to a derivative liability based on the aggregate fair value of the embedded conversion features on the date of issuance, which reduced the net carrying value of the Series A Preferred Stock. The carrying value of the Series A Preferred Stock at the time of issuance, \$155 million (\$200 million aggregate gross proceeds less \$43 million allocated to the derivative liability and \$2 million in transaction costs), was being accreted to the mandatory redemption amount using the effective interest method to Additional paid in capital in the Consolidated Statement of Financial Position as a deemed dividend from the date of issuance through the mandatory redemption date, November 15, 2021.

Extinguishment of Series A Preferred Stock

The carrying value, including the fair value of the embedded derivative liability, of the Series A Preferred Stock prior to extinguishment approximated \$203 million. Upon repurchase and exchange of the Series A Preferred Stock, Kodak recorded \$8 million as a deemed dividend to Additional paid in capital in the Consolidated Statement of Financial Position, representing the difference between the fair value of consideration transferred and the carrying value of the Series A Preferred Stock.

Dividend and Other Rights

The holders of Series A Preferred Stock were entitled to cumulative dividends payable quarterly in cash at a rate of 5.50% per annum. Until the third quarter of 2018 all dividends owed on the Series A Preferred Stock were declared and paid when due. No quarterly dividend was declared in the third or fourth quarters of 2018 or the first and second quarters of 2019. After the second quarter of 2019, quarterly cash dividends were declared each quarter and were paid when due. In July 2020, the Company declared and paid the four quarterly dividends that were in arrears. The total amount of dividends in arrears was \$11 million.

Series B Preferred Stock

The fair value of the Series B Preferred Stock at the time of issuance approximated \$95 million. The Company has classified the Series B Preferred Stock as temporary equity in the Consolidated Statement of Financial Position.

Dividend and Other Rights

On February 25, 2021, the Company filed with the Department of Treasury of the State of New Jersey a Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company (the "Series B Certificate of Designations") which established the designation, number of shares, rights, preferences and limitations of the Series B Preferred Stock which became effective upon filing. The Series B Preferred Stock ranks senior to the Common Stock and pari passu with the Series C Preferred Stock with respect to dividend rights and rights on liquidation, winding-up and dissolution. The Series B Preferred Stock has a liquidation preference of \$100 per share, and the holders of Series B Preferred Stock are entitled to cumulative dividends payable quarterly in cash at a rate of 4.0% per annum. If dividends on any Series B Preferred Stock are in arrears for six or more consecutive or non-consecutive dividend periods, the holders of the Series B Preferred Stock will be entitled to nominate one director at the next annual shareholder meeting and all subsequent shareholder meetings until all accumulated dividends on such Series B Preferred Stock have been paid or set aside. Dividends owed on the Series B Preferred Stock have been declared and paid when due. Holders of Series B Preferred Stock will have certain limited special approval rights, including with respect to the issuance of pari passu or senior equity securities of the Company.

Conversion Features

Each share of Series B Preferred Stock is convertible, at the option of each holder at any time, into shares of Common Stock at the initial conversion rate of 9.5238 shares of Common Stock for each share of Series B Preferred Stock (equivalent to an initial conversion price of \$10.50 per share of Common Stock). The initial conversion rate and the corresponding conversion price are subject to certain customary anti-dilution adjustments. If a holder elects to convert any shares of Series B Preferred Stock during a specified period in connection with a fundamental change (as defined in the Series B Certificate of Designations), such holder can elect to have the conversion rate adjusted and can elect to receive a cash payment in lieu of shares for a portion of the shares. Such holder will also be entitled to a payment in respect of accumulated dividends. In addition, the Company will have the right to require holders to convert any shares of Series B Preferred Stock in connection with certain reorganization events in which case the conversion rate will be adjusted, subject to certain limitations.

The Company has the right to cause the mandatory conversion of the Series B Preferred Stock into shares of Common Stock if the closing price of the Common Stock has equaled or exceeded \$14.50 (subject to adjustment in the same manner as the conversion price) for 45 trading days within a period of 60 consecutive trading days.

Embedded Conversion Features

The Company concluded that the Series B Preferred Stock was more akin to a debt-type instrument and that the economic characteristics and risks of the conversion option upon a fundamental change by the holder was not considered clearly and closely related to the Series B Preferred Stock. Accordingly, this embedded conversion feature was bifurcated from the Series B Preferred Stock and is being separately accounted for as a derivative. The Company allocated \$1 million to the derivative liability based on the aggregate fair value of the embedded conversion feature on the date of issuance which reduced the original carrying value of the Series B Preferred Stock.

The derivative is being accounted for at fair value with subsequent changes in the fair value being reported as part of Other charges (income), net in the Consolidated Statement of Operations. The fair value of the Series B Preferred Stock embedded derivative as of both December 31, 2022 and 2021 was a liability of \$1 million and is included in Other long-term liabilities in the accompanying Consolidated Statement of Financial Position. Refer to Note 14, "Financial Instruments" for information on the valuation of the derivative.

The carrying value of the Series B Preferred Stock at the time of issuance, \$93 million (\$95 million fair value of Series B Preferred Stock on February 26, 2021 less \$1 million allocated to the derivative liability and \$1 million of transaction costs) is being accreted to the mandatory redemption amount using the effective interest method to Additional paid in capital in the Consolidated Statement of Financial Position as a deemed dividend from the date of issuance through the mandatory redemption date, May 28, 2026.

Redemption Features

If any shares of Series B Preferred Stock have not been converted prior to May 28, 2026 (the "Redemption Date"), the Company is required to redeem such shares at \$100 per share plus the amount of accrued and unpaid dividends. As the Company concluded that the Series B Preferred Stock is considered more akin to a debt-type instrument, the redemption feature is considered to be clearly and closely related to the host contract and therefore was not required to be separated from the Series B Preferred Stock.

Series B Registration Rights Agreement

On November 15, 2016, the Company and the Series A Purchasers entered into a Registration Rights Agreement (the "Series A Registration Rights Agreement") which provided the Series A Purchasers with customary registration rights in respect of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock. The Series A Registration Rights Agreement contains other customary terms and conditions, including certain customary indemnification obligations. The Repurchase and Exchange Agreement extended the registration rights provided under the Series A Registration Rights Agreement to shares of Common Stock issuable upon conversion of the Series B Preferred Stock.

Series C Preferred Stock

Purchase Agreement

On February 26, 2021, the Company and GO EK Ventures IV, LLC (the "Investor") entered into a Series C Preferred Stock Purchase Agreement (the "Purchase Agreement") pursuant to which the Company agreed to sell to the Investor, and the Investor agreed to purchase from the Company, an aggregate of 1,000,000 shares of the Company's newly created 5.0% Series C Convertible Preferred Stock, no par value per share (the "Series C Preferred Stock"), for a purchase price of \$100 per share, representing \$100 million of gross proceeds to the Company. The initial issuance and sale of 750,000 shares (\$75 million gross proceeds) closed on February 26, 2021. The final issuance and sale of the remaining 250,000 shares (\$25 million gross proceeds) closed on March 30, 2021 after expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act. The Investor is a fund managed by Grand Oaks Capital. The Company used the proceeds from the sale of the Series C Preferred Stock for general corporate purposes including the funding of growth initiatives. The Company has classified the Series C Preferred Stock as temporary equity in the Consolidated Statement of Financial Position.

Dividend and Other Rights

On February 25, 2021, the Company filed with the Department of Treasury of the State of New Jersey a Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company (the "Series C Certificate of Designations") which established the designation, number of shares, rights, preferences and limitations of the Series C Preferred Stock and became effective upon filing. The Series C Preferred Stock ranks senior to the Common Stock and pari passu with the Series B Preferred Stock with respect to dividend rights and rights on liquidation, winding-up and dissolution. The Series C Preferred Stock has an initial liquidation preference of \$100 per share, and holders of Series C Preferred Stock are entitled to cumulative dividends payable quarterly "in-kind" in the form of additional shares of Series C Preferred Stock at a rate of 5.0% per annum. If dividends on the Series C Preferred Stock are not declared and paid for any given fiscal quarter, the liquidation preference is automatically increased by the amount of such unpaid dividends. Holders of the Series C Preferred Stock are also entitled to participate in any dividends paid on the Common Stock (other than stock dividends) on an as-converted basis, with such dividends on any shares of the Series C Preferred Stock being payable upon conversion of such shares of Series C Preferred Stock to Common Stock. Dividends owed on the Series C Preferred Stock have been declared and additional Series C shares issued when due.

Holders of Series C Preferred Stock are entitled to vote together with the holders of the Common Stock as a single class, in each case, on an as-converted basis, except where a separate class vote is required by law. Holders of Series C Preferred Stock have certain limited special approval rights, including with respect to the issuance of pari passu or senior equity securities of the Company.

Pursuant to the Purchase Agreement, the Investor has the right to nominate one director at each annual or special meeting of the Company's shareholders until the earlier of the third anniversary of the execution of the Purchase Agreement and such time as the Investor and its Affiliates (as defined in the Purchase Agreement) do not hold at least a majority of the Series C Preferred Stock purchased under the Purchase Agreement. The Investor's nominee pursuant to this right was elected to serve one-year terms at the annual meetings on May 19, 2021 and May 18, 2022.

Conversion Features

Each share of Series C Preferred Stock is convertible, at the option of each holder at any time, into shares of Common Stock at the initial conversion price of \$10 per share of Common Stock. The initial conversion price and the corresponding conversion rate are subject to certain customary anti-dilution adjustments and to proportional increase in the event the liquidation preference of the Series C Preferred Stock is automatically increased as described above. If a holder elects to convert any shares of Series C Preferred Stock during a specified period in connection with a fundamental change (as defined in the Series C Certificate of Designations), such holder can elect to have the conversion rate adjusted and can elect to receive a cash payment in lieu of shares for a portion of the shares of Common Stock. Such holder will also be entitled to a payment in respect of accumulated dividends and a payment based on the present value of all required remaining dividend payments through May 28, 2026, the mandatory redemption date. Such additional payments will be payable at the Company's option in cash or in additional shares of Common Stock. In addition, the Company will have the right to require holders to convert any shares of Series C Preferred Stock in connection with certain reorganization events in which case the conversion rate will be adjusted, subject to certain limitations.

The Company has the right to cause the mandatory conversion of the Series C Preferred Stock into shares of Common Stock (i) at any time after February 26, 2023 if the closing price of the Common Stock has equaled or exceeded 200% of the then-effective conversion price for 45 trading days within a period of 60 consecutive trading days, or (ii) at any time after February 26, 2024 if the closing price of the Common Stock has equaled or exceeded 150% of the then-effective conversion price for 45 trading days within a period of 60 consecutive trading days.

Embedded Conversion Features

The Company concluded that the Series C Preferred Stock is more akin to a debt-type instrument and that the economic characteristics and risks of the conversion option upon a fundamental change by the holder is not considered clearly and closely related to the Series C Preferred Stock. Accordingly, this embedded conversion feature was bifurcated from the Series C Preferred Stock and separately accounted for as a derivative. The Company allocated \$2 million of the net proceeds received to the derivative liability based on the aggregate fair value of the embedded conversion features on the dates of issuance which reduced the original carrying value of the Series C Preferred Stock. The derivative is being accounted for at fair value with subsequent changes in the fair value being reported as part of Other charges (income), net in the Consolidated Statement of Operations. The fair value of the Series C Preferred Stock derivative as of December 31, 2022 and 2021 was a liability of \$1 million and \$2 million, respectively, and is included in Other long-term liabilities in the accompanying Consolidated Statement of Financial Position. Refer to Note 14, "Financial Instruments" for information on the valuation of the derivative.

The carrying value of the Series C Preferred Stock at the time of issuance, \$97 million (\$100 million aggregate gross proceeds less \$2 million allocated to the derivative liability and \$1 million in transaction costs) is being accreted to the mandatory redemption amount using the effective interest method to Additional paid in capital in the Consolidated Statement of Financial Position as a deemed dividend from the date of issuance through the mandatory redemption date.

Redemption Features

If any shares of Series C Preferred Stock have not been converted prior to the Redemption Date, the Company is required to redeem such shares at \$100 per share plus the amount of accrued and unpaid dividends thereon; provided that the holders of the Series C Preferred Stock have the right to extend such redemption date by up to two years. As the Company concluded that the Series C Preferred Stock is more akin to a debt-type instrument, the redemption feature is considered to be clearly and closely related to the host contract and therefore was not required to be separated from the Series C Preferred Stock.

Series C Registration Rights Agreement

On February 26, 2021, the Company and the Investor entered into a Registration Rights Agreement (the "Series C Registration Rights Agreement") which provides the Investor with customary registration rights in respect of the shares of Common Stock issuable upon conversion of the Series C Preferred Stock. The Series C Registration Rights Agreement contains other customary terms and conditions, including certain customary indemnification obligations.

NOTE 11: LEASES
Kodak as lessee

The table below presents the lease-related assets and liabilities on the balance sheet:

(in millions)	Classification in the Consolidated Statement of Financial Position	December 31,	
		2022	2021
Assets			
Operating lease assets	Operating lease right-of-use assets	\$ 39	\$ 47
Finance lease assets	Property, plant and equipment, net	1	1
Total lease assets		\$ 40	\$ 48
Liabilities			
Current			
Operating	Current portion of operating leases	\$ 15	\$ 13
Noncurrent			
Operating	Operating leases, net of current portion	31	45
Finance	Long-term debt, net of current portion	1	1
Total lease liabilities		\$ 47	\$ 59
Weighted-average remaining lease term (in years)			
Operating			5
Finance			3
Weighted-average discount rate			
Operating			12.17%
Finance			5.18%

Lease Costs

The table below presents certain information related to the lease expense for finance and operating leases. Lease expense is presented gross of sublease income. See "Kodak as Lessor" section below for income from subleases.

(in millions)	Year Ended December 31,		
	2022	2021	2020
Finance lease expense			
Amortization of leased assets	\$ 1	\$ 1	\$ 1
Interest on lease liabilities	—	—	—
Operating lease expense	17	19	21
Variable lease expense ⁽¹⁾	7	9	9
Total lease expense	\$ 25	\$ 29	\$ 31

(1) Variable lease expense is related to real estate leases and primarily includes taxes, insurance and operating costs.

Other Information

The table below presents supplemental cash flow information related to leases.

(in millions)	Year Ended December 31,		
	2022	2021	2020
Cash paid for amounts included in the measurement of lease liabilities			
Operating cash flows for operating leases	\$ 19	\$ 21	\$ 22
Operating cash flow for finance leases	—	—	—
Financing cash flow for finance leases	1	1	1
	<u>\$ 20</u>	<u>\$ 22</u>	<u>\$ 23</u>

Undiscounted Cash Flows

The table below reconciles the undiscounted cash flows for the next five years and thereafter to the finance lease liabilities and operating lease liabilities recorded on the balance sheet.

Undiscounted future cash flows: (in millions)	Operating Leases	Finance Leases
2023	\$ 20	\$ —
2024	12	1
2025	7	—
2026	6	—
2027	5	—
Thereafter	18	—
Total minimum lease payments	<u>68</u>	<u>1</u>
Less: amount of lease payments representing interest	(22)	—
Present value of future minimum lease payments	46	1
Less: current obligations under leases	15	—
Long-term lease obligations	<u>\$ 31</u>	<u>\$ 1</u>

At December 31, 2022 leases that had not yet commenced were not significant.

Kodak as Lessor

Kodak's net investment in sales-type leases as of December 31, 2022 and 2021 was \$4 million and \$6 million, respectively. The current portion of the net investment in sales-type leases is included in Other current assets in the Consolidated Statement of Financial Position. The portion of the net investment in sales-type leases due after one year is included in Other long-term assets.

The table below reconciles the undiscounted cash flows to be received for the next five years and thereafter to the net investment in sales-type leases recorded in the Consolidated Statement of Financial Position:

(in millions)	
2023	\$ 2
2024	1
2025	1
2026 and thereafter	1
Total minimum lease payments	<u>5</u>
Less: unearned interest	(1)
Net investment in sales-type leases	<u>\$ 4</u>

Undiscounted cash flows to be received for the next five years and thereafter for operating leases and subleases are:

(in millions)		
2022	\$	8
2023		6
2024		2
2025		2
2026		1
Thereafter		5
Total minimum lease payments	\$	<u>24</u>

Income recognized on lease arrangements for the years ended December 31, 2022, 2021 and 2020 is presented below:

(in millions)		Year Ended December 31,		
		2022	2021	2020
Lease income - sales-type leases	\$	1	\$ 3	\$ 1
Lease income - operating leases		8	8	8
Sublease income		—	—	2
Variable lease income (1)		5	5	5
Total lease income	\$	<u>14</u>	<u>\$ 16</u>	<u>\$ 16</u>

(1) Variable lease income primarily represents operating costs under real estate leases and incremental variable income based on usage under equipment leases.

Equipment subject to operating leases and the related accumulated depreciation were as follows:

(in millions)		As of December 31,	
		2022	2021
Equipment subject to operating leases	\$	19	\$ 21
Accumulated depreciation		(16)	(18)
Equipment subject to operating leases, net	\$	<u>3</u>	<u>\$ 3</u>

Equipment subject to operating leases, net is included in Property, plant and equipment, net in the Consolidated Statement of Financial Position.

NOTE 12: COMMITMENTS AND CONTINGENCIES

Asset Retirement Obligations

Kodak's asset retirement obligations primarily relate to asbestos contained in buildings that Kodak owns. In many of the countries in which Kodak operates, environmental regulations exist that require Kodak to handle and dispose of asbestos in a special manner if a building undergoes major renovations or is demolished. Otherwise, Kodak is not required to remove the asbestos from its buildings. Kodak records a liability equal to the estimated fair value of its obligation to perform asset retirement activities related to the asbestos, computed using an expected present value technique, when sufficient information exists to calculate the fair value. Kodak does not have a liability recorded related to every building that contains asbestos because Kodak cannot estimate the fair value of its obligation for certain buildings due to a lack of sufficient information about the range of time over which the obligation may be settled through demolition, renovation or sale of the building.

The following table provides asset retirement obligation activity (in millions):

	For the Year Ended December 31,	
	2022	2021
Asset Retirement Obligations at start of period	\$ 42	\$ 41
Liabilities incurred in the current period	1	—
Liabilities settled in the current period	(2)	—
Revision in estimated cash flows	2	1
Asset Retirement Obligations at end of period	<u>\$ 43</u>	<u>\$ 42</u>

Other Commitments and Contingencies

As of December 31, 2022 the Company had outstanding letters of credit of \$58 million and \$43 million issued under the Amended ABL Credit Agreement and the L/C Facility Agreement, respectively, as well as bank guarantees and letters of credit of \$1 million, surety bonds in the amount of \$29 million, and restricted cash of \$69 million, primarily related to cash collateral for the outstanding letters of credit under the L/C Facility Agreement, to ensure the payment of possible casualty and workers compensation claims, environmental liabilities, legal contingencies, rental payments, and to support various customs, hedging, tax and trade activities. The restricted cash is recorded in Current assets and Restricted cash in the Consolidated Statement of Financial Position.

Kodak's Brazilian operations are involved in various litigation matters and have received or been the subject of numerous governmental assessments related to indirect and other taxes in various stages of litigation, as well as civil litigation and disputes associated with former employees and contract labor. The tax matters, which comprise the majority of the litigation matters, are primarily related to federal and state value-added taxes and income taxes. Kodak's Brazilian operations are disputing these matters and intend to vigorously defend their position. Kodak routinely assesses these matters as to the probability of ultimately incurring a liability in its Brazilian operations and records its best estimate of the ultimate loss in situations where it assesses the likelihood of loss as probable. As of December 31, 2022, Kodak's Brazilian Operations maintained accruals of approximately \$2 million for claims aggregating approximately \$114 million inclusive of interest and penalties where appropriate. The unreserved portion of the indirect taxes, civil litigation and disputes involving former employees and contract labor claims, inclusive of any related interest and penalties, for which there was at least a reasonable possibility that a loss may be incurred, amounted to approximately \$6 million.

In connection with assessments in Brazil, local regulations require Kodak to post security for a portion of the amounts in dispute. As of December 31, 2022, Kodak has posted security composed of \$6 million of pledged cash reported within Restricted cash in the Consolidated Statement of Financial Position and liens on certain Brazilian assets with a net book value of approximately \$41 million. Generally, any encumbrances on the Brazilian assets would be removed to the extent the matter is resolved in Kodak's favor.

On August 13, 2020 Tiandong Tang commenced a class action lawsuit against the Company, its Executive Chairman and Chief Executive Officer and its Chief Financial Officer in Federal District Court in the District of New Jersey, and on August 26, 2020 Jimmie A. McAdams and Judy P. McAdams commenced a class action lawsuit against the Company and its Executive Chairman and Chief Executive Officer in Federal District Court in the Southern District of New York (collectively, the "Securities Class Actions"). The Securities Class Actions seek damages and other relief based on alleged violations of federal securities laws in the context of the U.S. International Development Finance Corporation (the "DFC") announcement (the "DFC Announcement") of the signing of a non-binding letter of interest to provide a subsidiary of the Company with a potential \$765 million loan (the "DFC Loan") to support the launch of Kodak Pharmaceuticals, an initiative that would manufacture pharmaceutical ingredients for essential generic drugs (the "DFC Pharmaceutical Project") on July 28, 2020. The Securities Class Actions were transferred to the Federal District Court for the Western District of New York and were consolidated into a single proceeding (the "Consolidated Securities Class Action") on June 22, 2021. Les Investissements Kiz Inc. and UAT Trading Service, Inc. were appointed by the court to serve as lead plaintiff for the Consolidated Securities Class Action on August 2, 2021, and the lead plaintiff filed an amended consolidated complaint on October 1, 2021 which added Kodak's General Counsel and current and former members of its Board of Directors as additional defendants. The Company and individual defendants filed a joint motion to dismiss the Consolidated Securities Class Action on December 14, 2021. The lead plaintiff filed an opposition to the motion to dismiss on February 28, 2022, and the Company and the individual defendants filed responses to the plaintiff's opposition on April 6, 2022. A hearing with respect to the motion to dismiss was held on August 3, 2022, and the lawsuit was dismissed with prejudice on September 28, 2022. The plaintiffs filed a notice of appeal of the dismissal on October 27, 2022 but withdrew the appeal on January 25, 2023 as a result of which the lawsuit is concluded.

The Company has also received five requests under New Jersey law demanding, among other things, that the Company take certain actions in response to alleged breaches of fiduciary duty relating to option grants and securities transactions in the context of the DFC Announcement and alleged proxy statement disclosure deficiencies (each a “Derivative Demand”, and collectively the “Derivative Demands”). On May 19, 2021 Louis Peters, one of the persons making a Derivative Demand (“Peters”), commenced a derivative lawsuit on behalf of the Company against certain officers and current and former directors of the Company and the Company as a nominal defendant in the Supreme Court of the State of New York in Monroe County seeking damages and equitable relief based on alleged breaches of fiduciary duty and unjust enrichment resulting from stock trades, option grants and a charitable contribution in the context of the DFC Announcement of the potential DFC Loan and DFC Pharmaceutical Project (the “State Derivative Lawsuit”). The plaintiff filed an amended complaint in the State Derivative Lawsuit on August 23, 2021, and the Company and individual defendants filed motions to dismiss (or alternatively, in the case of the Company, a motion for summary judgment) in the State Derivative Lawsuit on October 22, 2021. On March 17, 2022, the Court issued an order staying the State Derivative Lawsuit pending the resolution of the Federal Derivative Lawsuit described below.

On September 2, 2021 Herbert Silverberg, another person making a Derivative Demand (“Silverberg”), commenced a derivative lawsuit on behalf of the Company against one current and one former director of the Company and the Company as a nominal defendant in the Federal District Court for the Western District of New York seeking damages and equitable relief on a basis overlapping with the State Derivative Lawsuit and alleged proxy statement misrepresentations and omissions. On October 4, 2021 Peters commenced a derivative lawsuit on behalf of the Company against the same parties named in the State Derivative Lawsuit in the Federal District Court for the Western District of New York seeking damages and equitable relief on a basis overlapping with the State Derivative Lawsuit and alleged violations of Section 10(b) of the Exchange Act. The Federal derivative lawsuits filed by Silverberg and Peters were consolidated into a single proceeding (the “Federal Derivative Lawsuit”) on January 18, 2022, and Peters was appointed as lead plaintiff in the Federal Derivative Lawsuit. An amended consolidated complaint combining the allegations contained in the Federal derivative lawsuits filed by Silverberg and Peters was filed in the Federal Derivative Lawsuit on February 16, 2022, and the Company and individual defendants served motions to dismiss or, in the alternative in the case of the Company, for summary judgment on April 15, 2022. Threshold discovery in the case has been completed, and the Company and individual defendants formally filed their motions to dismiss on September 30, 2022. The plaintiffs filed an opposition to the motions to dismiss/for summary judgment on November 14, 2022, and the Company and the individual defendants filed responses to the plaintiffs’ opposition on December 27, 2022 and December 23, 2022, respectively.

Additional shareholder derivative lawsuits may be brought based on the other Derivative Demands (any such lawsuits, collectively with the State Derivative Lawsuit, the Federal Derivative Lawsuit and the Fiduciary Class Action, the “Fiduciary Matters”). The Company, acting through a Special Committee of Independent Directors, previously determined that there was no merit to the claims alleged by the Derivative Demands made through the time of its determination (except with respect to the charitable contribution, which was not fully considered by the Special Committee). See the Company’s Current Report on Form 8-K filed with the SEC on September 16, 2020. The Company, acting through a separate Special Litigation Committee of Independent Directors, concurred with the first Special Committee’s findings and further concluded it is not in the Company’s interest to bring or allow any other shareholder to assert any of the claims alleged by the State Derivative Lawsuit or Federal Derivative Lawsuit (with the exception of the Peters claim purportedly arising under Section 10(b) of the Exchange Act, which was not addressed as no demand was made with respect to such claim). The second Special Litigation Committee will carefully review any other additional complaints constituting Fiduciary Matters which may be filed.

The DFC Announcement has also prompted investigations by several congressional committees, the SEC and the New York Attorney General’s office. The Company has cooperated in those investigations.

As previously reported, the Attorney General of the State of New York (the “NYAG”) has threatened to file a lawsuit against the Company and its Chief Executive Officer alleging violations of New York State’s Martin Act (the “Threatened Claim”). In connection with the Threatened Claim, on June 15, 2021 the Supreme Court of the State of New York in New York County issued an order providing for additional document production by the Company to the NYAG and the taking by the NYAG of investigative testimony of the Company’s Chief Executive Officer and General Counsel. The Company has completed its document production and its officers provided the testimony as contemplated by such order on October 8, 2021 and October 1, 2021, respectively. The Company had discussions with the NYAG regarding a potential resolution of the Threatened Claim in the spring of 2022, but those discussions did not result in a resolution. If the Threatened Claim is ultimately brought by the NYAG, the Company intends to vigorously defend itself against the Threatened Claim.

In addition, Kodak is involved in various lawsuits, claims, investigations, remediations and proceedings, including, from time to time, commercial, customs, employment, environmental, tort and health and safety matters, which are being handled and defended in the ordinary course of business. Kodak is also subject, from time to time, to various assertions, claims, proceedings and requests for indemnification concerning intellectual property, including patent infringement suits involving technologies that are incorporated in a broad spectrum of Kodak's products. These matters are in various stages of investigation and litigation and are being vigorously defended. Based on information currently available, Kodak does not believe that it is probable that the outcomes in these various matters, individually or collectively, will have a material adverse effect on its financial condition or results of operations. Litigation is inherently unpredictable, and judgments could be rendered or settlements entered that could adversely affect Kodak's operating results or cash flows in a particular period. Kodak routinely assesses all of its litigation and threatened litigation as to the probability of ultimately incurring a liability and records its best estimate of the ultimate loss in situations where it assesses the likelihood of loss as probable.

NOTE 13: GUARANTEES

In accordance with the terms of a settlement agreement concerning certain of the Company's historical environmental liabilities at EBP, in the event the historical liabilities exceed \$99 million, the Company will become liable for 50% of the portion above \$99 million with no limitation to the maximum potential future payments. There is no liability recorded related to this guarantee.

Indemnifications

Kodak may, in certain instances, indemnify third parties when it sells businesses and real estate, and in the ordinary course of business with its customers, suppliers, service providers and business partners. Additionally, Kodak indemnifies officers and directors who are, or were, serving at Kodak's request in such capacities. Historically, costs incurred to settle claims related to these indemnifications have not been material to Kodak's financial position, results of operations or cash flows. Further, the fair value of any right to indemnification granted during the year ended December 31, 2022 was not material to Kodak's financial position, results of operations or cash flows.

Extended Warranty Arrangements

Kodak offers its customers extended warranty arrangements that are generally one year, but may range from three months to six years after the original warranty period. Kodak provides repair services and routine maintenance under these arrangements. Kodak has not separated the extended warranty costs from the routine maintenance service costs, as it is not practicable to do so. Therefore, these costs have been aggregated in the discussion that follows. The change in Kodak's deferred revenue balance in relation to these extended warranty and maintenance arrangements, which is reflected in Other current liabilities in the accompanying Consolidated Statement of Financial Position, was as follows:

(in millions)		
Deferred revenue on extended warranties as of December 31, 2020	\$	19
New extended warranty and maintenance arrangements		90
Recognition of extended warranty and maintenance arrangement revenue		(90)
Deferred revenue on extended warranties as of December 31, 2021		19
New extended warranty and maintenance arrangements		89
Recognition of extended warranty and maintenance arrangement revenue		(89)
Deferred revenue on extended warranties as of December 31, 2022	\$	19

Costs incurred under these extended warranty and maintenance arrangements for the years ended December 31, 2022, 2021 and 2020 amounted to \$78 million, \$82 million and \$88 million, respectively.

NOTE 14: FINANCIAL INSTRUMENTS

Kodak, as a result of its global operating and financing activities, is exposed to changes in foreign currency exchange rates and interest rates, which may adversely affect its results of operations and financial position. Kodak manages such exposures, in part, with derivative financial instruments. Foreign currency forward contracts are used to mitigate currency risk related to foreign currency denominated assets and liabilities, as well as forecasted foreign currency denominated intercompany assets.

Kodak's exposure to changes in interest rates results from its investing and borrowing activities used to meet its liquidity needs. Kodak does not utilize financial instruments for trading or other speculative purposes.

Kodak's foreign currency forward contracts are not designated as hedges and are marked to market through net earnings (loss) at the same time that the exposed assets and liabilities are re-measured through net earnings (loss) (both in Other charges (income), net in the Consolidated Statement of Operations). The notional amount of such contracts open at December 31, 2022 and 2021 was approximately \$308 million and \$322 million, respectively. The majority of the contracts of this type held by Kodak at December 31, 2022 and 2021 were denominated in euros, Chinese renminbi and Japanese yen. The net effect of foreign currency forward contracts in the results of operations is shown in the following table:

(in millions)	Year Ended December 31,		
	2022	2021	2020
Net loss (gain) from derivatives not designated as hedging instruments	\$ 16	\$ (1)	\$ (11)

Kodak had no derivatives designated as hedging instruments for the years ended December 31, 2022 and 2021. Kodak's derivative counterparties are high-quality investment or commercial banks with significant experience with such instruments. Kodak manages exposure to counterparty credit risk by requiring specific minimum credit standards and diversification of counterparties. Kodak has procedures to monitor the credit exposure amounts. The maximum credit exposure at December 31, 2022 was not significant to Kodak.

In the event of a default under the Company's Credit Agreements, or a default under any derivative contract or similar obligation of Kodak, subject to certain minimum thresholds, the derivative counterparties would have the right, although not the obligation, to require immediate settlement of some or all open derivative contracts at their then-current fair value, but with liability positions netted against asset positions with the same counterparty.

As discussed in Note 9, "Debt and Finance Leases", the Company concluded that the 2021 Convertible Notes are more akin to a debt-type instrument and that the economic characteristics and risks of the embedded conversion features are not considered clearly and closely related to the 2021 Convertible Notes. The embedded conversion features not considered clearly and closely related are the conversion at the option of the holder ("Optional Conversion"), the mandatory conversion by Kodak ("Mandatory Conversion") and the conversion in the event of a fundamental transaction by the holder at the then applicable conversion rate ("Fundamental Change Conversion"). Accordingly, these embedded conversion features were bifurcated from the 2021 Convertible Notes and separately accounted for on a combined basis as a single derivative asset or liability. The derivative was in a liability position at December 31, 2022 and 2021 and was reported in Other long-term liabilities in the Consolidated Statement of Financial Position. The derivative is being accounted for at fair value with changes in fair value included in Other charges (income), net in the Consolidated Statement of Operations.

As discussed in Note 10, "Redeemable, Convertible, Preferred Stock", the Company concluded that the Series B Preferred Stock and the Series C Preferred Stock are more akin to a debt-type instrument and that the economic characteristics and risks of the conversion in the event of a fundamental change ("Fundamental Change Conversion") is not considered clearly and closely related to the Series B and Series C Preferred Stock. Accordingly, this embedded conversion feature was bifurcated from both the Series B and Series C Preferred Stock and are separately accounted for as a derivative asset or liability. Both derivatives were in a liability position at December 31, 2022 and 2021 and were reported in Other long-term liabilities in the Consolidated Statement of Financial Position. The derivatives are being accounted for at fair value with changes in fair value included in Other charges (income), net in the Consolidated Statement of Operations.

The Company concluded that the Series A Preferred Stock was more akin to a debt-type instrument and that the economic characteristics and risks of the embedded conversion features, except where the conversion price was increased to the liquidation preference, were not considered clearly and closely related to the Series A Preferred Stock.

The embedded conversion features not considered clearly and closely related were the conversion at the option of the holder, the ability of Kodak to automatically convert the stock after the second anniversary of issuance and the conversion in the event of a fundamental change or reorganization ("Fundamental Change or Reorganization Conversion"). Accordingly, these embedded conversion features were bifurcated from the Series A Preferred Stock and separately accounted for on a combined basis as a single derivative asset or liability. The embedded conversion features were revalued as of February 26, 2021 when the Company repurchased one million shares of Series A Preferred Stock and exchanged the remaining one million shares of Series A Preferred Stock for Series B Preferred Stock. The revaluation as of February 26, 2021 resulted in the recognition of \$2 million of net expense which was included in Other charges (income), net in the Consolidated Statement of Operations. With the repurchase and exchange of the shares of the Series A Preferred Stock the embedded conversion features derivative liability expired.

As discussed in Note 9, "Debt and Finance Leases", the Company concluded that the 2019 Convertible Notes were more akin to a debt-type instrument and that the economic characteristics and risks of the embedded conversion features and term extension option were not considered clearly and closely related to the 2019 Convertible Notes. The embedded conversion features not considered clearly and closely related are the conversion at the option of the holder ("Optional Conversion") and the conversion in the event of a fundamental change or reorganization ("Fundamental Change or Reorganization Conversion"). Accordingly, these embedded conversion features and the term extension option were bifurcated from the 2019 Convertible Notes and separately accounted for on a combined basis as a single derivative asset or liability. The embedded conversion features and term extension option were revalued as of August 3, 2020, when the Initial Conversion Shares were issued, resulting in the recognition of \$407 million of expense for a pro-rata portion of the embedded conversion features and term extension option. The remaining embedded conversion features and term extension option were revalued again as of the Mandatory Conversion date, resulting in the recognition of \$9 million of net expense. With the conversion of the 2019 Convertible Notes in the third quarter of 2020, the embedded conversion features and term extension option expired. The derivative was being accounted for at fair value with changes in fair value reported in Other charges (income), net in the Consolidated Statement of Operations.

The net effect of the Preferred Stock and Convertible Notes embedded derivatives in the results of operations is shown in the following table:

(in millions)	Year Ended December 31,		
	2022	2021	2020
Net (gain) loss from Preferred Stock and Convertible Notes embedded derivatives	\$ (3)	\$ (7)	\$ 382

Fair Value

Fair values of Kodak's foreign currency forward contracts are determined using observable inputs (Level 2 fair value measurements) and are based on the present value of expected future cash flows (an income approach valuation technique) considering the risks involved and using discount rates appropriate for the duration of the contracts. The gross fair value of foreign currency forward contracts in an asset position are reported in Other current assets in the Consolidated Statement of Financial Position and the gross fair value of foreign currency contracts in a liability position are reported in Other current liabilities. The gross fair value of foreign currency forward contracts in an asset position as of December 31, 2022 and 2021 was \$1 million and \$0 million, respectively. The gross fair value of the foreign currency forward contracts in a liability position as of December 31, 2022 and 2021 was \$1 million and \$0 million, respectively.

The fair value of the embedded conversion features derivatives was calculated using unobservable inputs (Level 3 fair measurements). The value of the embedded derivatives associated with the 2021 Convertible Notes and Series A, Series B and Series C Preferred Stock was calculated using a binomial lattice model.

Except for the fair value determined at the time of conversion, the fair value of the embedded conversion features and term extension option for the 2019 Convertible Notes derivatives was calculated using unobservable inputs (Level 3 fair measurements). The value of the conversion features associated with the 2019 Convertible Notes was calculated using a binomial lattice model. The value of the term extension option reflected the probability weighted average value of the 2019 Convertible Notes using the original maturity date and a hypothetical extended maturity date, with all other contractual terms unchanged. The fair value of the embedded conversion features and term extension option for the 2019 Convertible Notes were revalued as of the conversion dates, August 3, 2020 and September 30, 2020. The fair value of the embedded derivative at each conversion date was calculated based on the fair value of the shares issued less the fair value of debt. The fair value of shares issued is based on the weighted average stock price at the time of day the shares were transferred for August 3, 2020, and the closing stock price as of September 30, 2020. The fair value of debt is based on pricing models based on the value of related cash flows discounted at current market interest rates.

The following tables present the key inputs in the determination of fair value for the embedded conversion features:

2021 Convertible Notes:

	Valuation Date	
	December 31, 2022	December 31, 2021
Total value of embedded derivative liability (in millions)	\$ 2	\$ 4
Kodak's closing stock price	\$ 3.05	\$ 4.68
Expected stock price volatility	50.00%	36.00%
Risk free rate	4.17%	1.17%
Implied credit spread on the 2021 Convertible Notes	26.19%	18.89%

Series B Preferred Stock:

	Valuation Date	
	December 31, 2022	December 31, 2021
Total value of embedded derivative liability (in millions)	\$ 1	\$ 1
Kodak's closing stock price	\$ 3.05	\$ 4.68
Expected stock price volatility	50.00%	36.00%
Risk free rate	4.17%	1.17%
Implied credit spread on the Series B Preferred Stock	27.19%	19.39%

Series C Preferred Stock:

	Valuation Date	
	December 31, 2022	December 31, 2021
Total value of embedded derivative liability (in millions)	\$ 1	\$ 2
Kodak's closing stock price	\$ 3.05	\$ 4.68
Expected stock price volatility	50.00%	36.00%
Risk free rate	4.17%	1.17%
Implied credit spread on the Series C Preferred Stock	29.19%	21.39%

2019 Convertible Notes:

	Valuation Date	
	September 30, 2020	August 3, 2020
Total value of embedded derivative liability immediately prior to extinguishment (in millions)	\$ 9	\$ 429
Total value of embedded derivative liability that expired (in millions)	\$ 9	\$ 416
Value of remaining embedded derivative liability (in millions)	\$ —	\$ 13
Kodak's closing stock price (1)	8.82	16.91
Risk free rate	0.12%	0.12%
Yield on the Series A Preferred Stock	8.93%	9.47%

(1) The closing stock price was used for the September 30, 2020 valuation. The weighted average stock price based on the time of day the shares were transferred was used for the August 3, 2020 valuation.

The Fundamental Change Conversion values at issuance were calculated as the difference between the total value of the 2021 Convertible Notes, Series B or Series C Preferred Stock, as applicable, and the sum of the net present value of the cash flows if the 2021 Convertible Notes are repaid at their maturity or the Series B and Series C Preferred Stock is redeemed on its redemption date and the values of the other embedded derivatives. The Fundamental Change Conversion value reduces the value of the embedded conversion features derivative liability. Other than events which alter the likelihood of a fundamental change, the value of the Fundamental Change Conversion reflects the value as of the issuance date, amortized for the passage of time.

The calculation of the Fundamental Change or Reorganization Conversion values for the 2019 Convertible Notes and Series A Preferred Stock was the same as the calculation described above for the Fundamental Change Conversion values for the 2021 Convertible Notes and Series B and C Preferred Stock.

The fair values of long-term borrowings were \$271 million and \$269 million at December 31, 2022 and 2021, respectively. Fair values of long-term borrowings (Level 2 fair value measurements) are determined by reference to quoted market prices, if available, or by pricing models based on the value of related cash flows discounted at current market interest rates.

Transfers between levels of the fair value hierarchy are recognized based on the actual date of the event or change in circumstances that caused the transfer. There were no transfers between levels of the fair value hierarchy during the year ended December 31, 2022.

The carrying values of cash and cash equivalents, restricted cash and the current portion of long-term borrowings approximate their fair values.

NOTE 15: REVENUE

Disaggregation of Revenue

The following tables present revenue disaggregated by major product, portfolio summary and geography.

Major product:

	Year Ended December 31, 2022					
	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Other	Total
Plates, inks and other consumables	\$ 589	\$ 63	\$ 26	\$ —	\$ —	\$ 678
Ongoing service arrangements (1)	75	130	14	—	—	219
Total Annuities	664	193	40	—	—	897
Equipment & Software	47	34	—	—	—	81
Film and chemicals	—	—	192	—	—	192
Other (2)	—	—	2	17	16	35
Total	\$ 711	\$ 227	\$ 234	\$ 17	\$ 16	\$ 1,205

**Year Ended
December 31, 2021**

	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Other	Total
Plates, inks and other consumables	\$ 530	\$ 69	\$ 24	\$ —	\$ —	\$ 623
Ongoing service arrangements (1)	79	134	6	—	—	219
Total Annuities	<u>609</u>	<u>203</u>	<u>30</u>	<u>—</u>	<u>—</u>	<u>842</u>
Equipment & Software	50	46	—	—	—	96
Film and chemicals	—	—	180	—	—	180
Other (2)	—	—	2	15	15	32
Total	<u>\$ 659</u>	<u>\$ 249</u>	<u>\$ 212</u>	<u>\$ 15</u>	<u>\$ 15</u>	<u>\$ 1,150</u>

**Year Ended
December 31, 2020**

	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Other	Total
Plates, inks and other consumables	\$ 463	\$ 64	\$ 21	\$ —	\$ —	\$ 548
Ongoing service arrangements (1)	80	131	3	—	—	214
Total Annuities	<u>543</u>	<u>195</u>	<u>24</u>	<u>—</u>	<u>—</u>	<u>762</u>
Equipment & Software	49	46	—	—	—	95
Film and chemicals	—	—	137	—	—	137
Other (2)	—	—	11	13	11	35
Total	<u>\$ 592</u>	<u>\$ 241</u>	<u>\$ 172</u>	<u>\$ 13</u>	<u>\$ 11</u>	<u>\$ 1,029</u>

(1) Service revenue in the Consolidated Statement of Operations includes the ongoing service revenue shown above as well as revenue from project-based document management and managed print services businesses, which is included in Other above.

(2) Other includes revenue from professional services, non-recurring engineering services, print and managed media services, tenant rent and related property management services and licensing.

Product Portfolio Summary:
**Year Ended
December 31, 2022**

	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Other	Total
Growth engines (1)	\$ 266	\$ 129	\$ 2	\$ —	\$ —	\$ 397
Strategic other businesses (2)	445	55	232	17	16	765
Planned declining businesses (3)	—	43	—	—	—	43
	<u>\$ 711</u>	<u>\$ 227</u>	<u>\$ 234</u>	<u>\$ 17</u>	<u>\$ 16</u>	<u>\$ 1,205</u>

**Year Ended
December 31, 2021**

	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Other	Total
Growth engines (1)	\$ 217	\$ 142	\$ —	\$ —	\$ —	\$ 359
Strategic other businesses (2)	442	58	211	15	15	741
Planned declining businesses (3)	—	49	1	—	—	50
	<u>\$ 659</u>	<u>\$ 249</u>	<u>\$ 212</u>	<u>\$ 15</u>	<u>\$ 15</u>	<u>\$ 1,150</u>

**Year Ended
December 31, 2020**

	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Other	Total
Growth engines (1)	\$ 162	\$ 135	\$ 3	\$ —	\$ —	\$ 300
Strategic other businesses (2)	430	52	159	13	11	665
Planned declining businesses (3)	—	54	10	—	—	64
	<u>\$ 592</u>	<u>\$ 241</u>	<u>\$ 172</u>	<u>\$ 13</u>	<u>\$ 11</u>	<u>\$ 1,029</u>

- (1) Growth engines consist of Sonora in the Traditional Printing segment, PROSPER and Software in the Digital Printing segment and Advanced Materials and Functional Printing in the Advanced Materials and Chemicals segment, excluding intellectual property (IP) licensing.
- (2) Strategic other businesses include plates and CTP equipment and related service in the Traditional Printing segment; brand licensing; Nexpress and related toner business in the Digital Printing segment; and Motion Picture and Industrial Film and Chemicals (including external inks) and IP licensing in the Advanced Materials and Chemicals segment.
- (3) Planned declining businesses are product lines where the decision has been made to stop new product development and manage an orderly expected decline in the installed product and annuity base or are otherwise not strategic to Kodak. These product families consist of Consumer Inkjet, Kodak Services for Business (“KSB”) and Kodakit in the Advanced Materials and Chemicals segment and Versamark and Digimaster in the Digital Printing segment.

Geography (1):
**Year Ended
December 31, 2022**

	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Other	Total
United States	\$ 167	\$ 109	\$ 177	\$ 17	\$ 16	\$ 486
Canada	12	8	2	—	—	22
North America	179	117	179	17	16	508
Europe, Middle East and Africa	336	74	19	—	—	429
Asia Pacific	166	33	35	—	—	234
Latin America	30	3	1	—	—	34
Total Sales	\$ 711	\$ 227	\$ 234	\$ 17	\$ 16	\$ 1,205

**Year Ended
December 31, 2021**

	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Other	Total
United States	\$ 135	\$ 109	\$ 152	\$ 15	\$ 15	\$ 426
Canada	12	8	2	—	—	22
North America	147	117	154	15	15	448
Europe, Middle East and Africa	302	85	17	—	—	404
Asia Pacific	181	43	41	—	—	265
Latin America	29	4	—	—	—	33
Total Sales	\$ 659	\$ 249	\$ 212	\$ 15	\$ 15	\$ 1,150

**Year Ended
December 31, 2020**

	Traditional Printing	Digital Printing	Advanced Materials and Chemicals	Brand	Other	Total
United States	\$ 121	\$ 106	\$ 115	\$ 13	\$ 11	\$ 366
Canada	14	8	1	—	—	23
North America	135	114	116	13	11	389
Europe, Middle East and Africa	257	86	12	—	—	355
Asia Pacific	171	37	43	—	—	251
Latin America	29	4	1	—	—	34
Total Sales	\$ 592	\$ 241	\$ 172	\$ 13	\$ 11	\$ 1,029

(1) Sales are reported in the geographic area in which they originate. No non-U.S. country generated more than 10% of net sales in the years ended December 31, 2022, 2021 and 2020.

Contract Balances

The timing of revenue recognition, billings and cash collections results in billed trade receivables, unbilled receivables (contract assets), and customer advances and deposits (contract liabilities) in the Consolidated Statement of Financial Position. The contract assets are transferred to trade receivables when the rights to consideration become unconditional. The amounts recorded for contract assets are reported in Other current assets in the Consolidated Statement of Financial Position. The contract liabilities primarily relate to prepaid service contracts, upfront payments for certain equipment purchases or prepaid royalties on intellectual property arrangements. The amounts recorded for contract liabilities are reported in Other current liabilities and Other long-term liabilities in the Consolidated Statement of Financial Position. Contract assets and liabilities consisted of the following:

(in millions)	As of December 31,	
	2022	2021
Contract assets	\$ 1	\$ 3
Contract liabilities - current	40	43
Contract liabilities - long-term	11	14
Total	\$ 51	\$ 57

Activity in deferred revenue accounts consisted of:

(in millions)	Year Ended December 31,		
	2022	2021	2020
Beginning liabilities recognized in revenue	\$ 38	\$ 37	\$ 43
Cash payments received, net of revenue recognized	30	28	41

NOTE 16: OTHER OPERATING INCOME, NET

(in millions)	Year Ended December 31,		
	2022	2021	2020
Expense (income):			
Legal settlements	\$ (1)	\$ (7)	\$ —
Loss (gain) related to the sales of assets (1)	—	1	(10)
Transition services agreement income	—	—	(6)
Asset impairments (2)	1	—	3
Other	(1)	—	(1)
Total	\$ (1)	\$ (6)	\$ (14)

(1) In the first quarter of 2020, Kodak sold a property in the U.S. and recognized a gain of \$9 million.

(2) In the fourth quarter of 2022 and first quarter of 2020, Kodak recorded impairment charges of \$1 million and \$3 million related to the Kodak trade name. Refer to Note 6, "Goodwill and Other Intangible Assets".

NOTE 17: OTHER CHARGES (INCOME), NET

(in millions)	Year Ended December 31,		
	2022	2021	2020
Change in fair value of embedded conversion features derivative ⁽¹⁾	\$ (3)	\$ (7)	\$ 382
Loss on foreign exchange transactions	4	2	5
Other	—	—	(1)
Total	<u>\$ 1</u>	<u>\$ (5)</u>	<u>\$ 386</u>

(1) Refer to Note 14, "Financial Instruments".

NOTE 18: INCOME TAXES

The components of earnings (loss) from continuing operations before income taxes and the related provision for U.S. and other income taxes were as follows (in millions):

	Year Ended December 31,		
	2022	2021	2020
(Loss) earnings from continuing operations before income taxes:			
U.S.	\$ (2)	\$ (12)	\$ (388)
Outside the U.S.	33	40	12
Total	<u>\$ 31</u>	<u>\$ 28</u>	<u>\$ (376)</u>
U.S. income taxes:			
Current benefit	\$ —	\$ —	\$ —
Deferred (benefit) provision	(3)	(1)	2
Income taxes outside the U.S.:			
Current provision (benefit)	7	4	(3)
Deferred provision	1	1	169
Total provision	<u>\$ 5</u>	<u>\$ 4</u>	<u>\$ 168</u>

The differences between income taxes computed using the U.S. federal income tax rate and the provision for income taxes for continuing operations were as follows (in millions):

	Year Ended December 31,		
	2022	2021	2020
Amount computed using the statutory rate	\$ 7	\$ 6	\$ (79)
Increase (reduction) in taxes resulting from:			
Unremitted foreign earnings	(2)	(1)	2
Operations outside the U.S.	4	8	3
Legislative tax law and rate changes	—	(28)	(11)
Valuation allowance	(9)	20	220
Tax settlements and adjustments, including interest	4	(1)	(43)
Embedded derivative liability	—	(1)	81
Other, net	1	1	(5)
Provision from income taxes	<u>\$ 5</u>	<u>\$ 4</u>	<u>\$ 168</u>

The significant components of deferred tax assets and liabilities were as follows (in millions):

	As of December 31,	
	2022	2021
Deferred tax assets		
Restructuring programs	\$ 2	\$ 1
Leasing	3	3
Foreign tax credit	358	358
Inventories	14	10
Investment tax credit	26	33
Employee deferred compensation	22	26
Depreciation	33	37
Research and development costs	42	42
Tax loss carryforwards	506	499
Other deferred revenue	2	2
Other	74	85
Total deferred tax assets before valuation allowances	\$ 1,082	\$ 1,096
Valuation allowances	(826)	(934)
Total net deferred tax assets	\$ 256	\$ 162
Deferred tax liabilities		
Pension and postretirement obligations	\$ (258)	\$ (162)
Goodwill/intangibles	(8)	(9)
Unremitted foreign earnings	(17)	(20)
Total deferred tax liabilities	(283)	(191)
Net deferred tax liabilities	\$ (27)	\$ (29)

Deferred tax liabilities are reported in the following component within the Consolidated Statement of Financial Position (in millions):

	As of December 31,	
	2022	2021
Other long-term liabilities	\$ (27)	\$ (29)
Net deferred tax liabilities	\$ (27)	\$ (29)

As of December 31, 2022, Kodak had available domestic and foreign NOL carry-forwards for income tax purposes of approximately \$2,083 million, of which approximately \$910 million have an indefinite carry-forward period. The remaining \$1,173 million expire between the years 2023 and 2042. As of December 31, 2022, Kodak had unused foreign tax credits and investment tax credits of \$358 million and \$26 million, respectively, with various expiration dates through 2036.

Utilization of NOL carry-forwards and tax credits may be subject to limitations in the event of significant changes in stock ownership of the Company in the future. Section 382 of the Internal Revenue Code of 1986, as amended, imposes annual limitations on the utilization of NOL carryforwards, other tax carryforwards, and certain built-in losses as defined under that Section, upon an ownership change. In general terms, an ownership change may result from transactions that increase the aggregate ownership of certain stockholders in Kodak's stock by more than 50 percentage points over a three-year testing period.

Kodak had deferred tax liabilities of \$17 million and \$20 million for potential taxes on the undistributed earnings, primarily attributed to foreign withholding taxes, as of December 31, 2022 and 2021, respectively.

Kodak's valuation allowance as of December 31, 2022 was \$826 million. Of this amount, \$285 million was attributable to Kodak's net deferred tax assets outside the U.S. of \$275 million and \$541 million related to Kodak's net deferred tax assets in the U.S. of \$524 million, for which Kodak believes it is not more likely than not that the assets will be realized.

Kodak's valuation allowance as of December 31, 2021 was \$934 million. Of this amount, \$360 million was attributable to Kodak's net deferred tax assets outside the U.S. of \$351 million, and \$574 million related to Kodak's net deferred tax assets in the U.S. of \$554 million, for which Kodak believes it is not more likely than not that the assets will be realized.

As of March 31, 2020, Kodak determined that it was more likely than not that deferred tax assets outside the U.S. which were not offset with valuation allowances as of March 31, 2020 would not be realized due to reductions in estimates of future profitability as a result of the COVID-19 pandemic in locations outside the U.S. Accordingly, Kodak recorded a provision of \$167 million associated with the establishment of a valuation allowance on those deferred tax assets.

Accounting for Uncertainty in Income Taxes

A reconciliation of the beginning and ending amount of Kodak's liability for income taxes associated with unrecognized tax benefits is as follows (in millions):

	Year Ended December 31,		
	2022	2021	2020
Balance as of January 1	\$ 4	\$ 8	\$ 54
Tax positions related to the current year:			
Additions	—	—	—
Tax positions related to prior years:			
Additions	1	—	2
Reductions	(2)	(1)	(42)
Settlements with taxing jurisdictions	—	(3)	(6)
Balance as of December 31	<u>\$ 3</u>	<u>\$ 4</u>	<u>\$ 8</u>

Kodak's policy regarding interest and/or penalties related to income tax matters is to recognize such items as a component of provision for income taxes. Kodak had approximately \$10 million and \$11 million of interest and penalties associated with uncertain tax benefits accrued as of December 31, 2022 and 2021, respectively.

Kodak had uncertain tax benefits of approximately \$13 million and \$15 million as of December 31, 2022 and 2021, respectively, that, if recognized, would affect the effective income tax rate. Kodak has classified certain income tax liabilities as current or noncurrent based on management's estimate of when these liabilities will be settled. The current liabilities are recorded in Other current liabilities in the Consolidated Statement of Financial Position. Noncurrent income tax liabilities are recorded in Other long-term liabilities in the Consolidated Statement of Financial Position.

It is reasonably possible that the liability associated with Kodak's unrecognized tax benefits will increase or decrease within the next twelve months. These changes may be the result of settling ongoing audits or the expiration of statutes of limitations. Such changes to the unrecognized tax benefits could range from \$0 million to \$2 million based on current estimates. Audit outcomes and the timing of audit settlements are subject to significant uncertainty.

Although management believes that adequate provision has been made for such issues, there is the possibility that the ultimate resolution of such issues could have an adverse effect on the earnings of Kodak. Conversely, if these issues are resolved favorably in the future, the related provision would be reduced, thus having a positive impact on earnings.

During 2022, Kodak agreed to terms with a taxing authority outside the U.S. and settled open tax audits for years 2015 through 2018. This settlement included a cash payment of \$2 million which is reflected in the provision for taxes and a decrease in net deferred tax assets of \$3 million which is fully offset by a reduction in the valuation allowance.

During 2021, Kodak agreed to terms with a taxing authority outside the U.S. and settled open tax audits for years through 2014. For these years Kodak originally recorded liabilities for unrecognized tax positions ("UTPs") totaling \$3 million (plus interest of approximately \$4 million) which were substantially offset by prepaid assets.

During 2020, Kodak agreed to terms with the IRS and settled the federal audit for calendar years 2013 and 2014. For these years, Kodak originally recorded a federal UTP totaling \$41 million, which was fully offset by tax attributes. This settlement resulted in an increase in net deferred tax assets and was fully offset by a corresponding increase in Kodak's U.S. valuation allowance, resulting in no net tax benefit.

Kodak is subject to taxation and files income tax returns in the U.S. federal jurisdiction and in many state and foreign jurisdictions. Kodak has substantially concluded all U.S. federal income tax matters for years through 2018 and state income tax matters for years through 2015 with the respective tax authorities. With respect to countries outside the U.S., Kodak has substantially concluded all material foreign income tax matters through 2013 with respective foreign tax jurisdiction authorities.

NOTE 19: RESTRUCTURING COSTS AND OTHER

Kodak recognizes the need to continually rationalize its workforce and streamline its operations in the face of ongoing business and economic changes. Charges for restructuring initiatives are recorded in the period in which Kodak commits to a formalized restructuring plan, or executes the specific actions contemplated by the plan and all criteria for liability recognition under the applicable accounting guidance have been met.

The activity incurred in relation to restructuring programs during the three years ended December 31, 2022 were as follows (in millions):

	Severance Reserve (1)	Exit Costs Reserve (1)	Inventory Write-downs (1)	Total
Balance as of December 31, 2019	\$ 11	\$ 1	\$ —	\$ 12
Charges	16	1	—	17
Utilization/cash payments	(14)	(1)	—	(15)
Other adjustments & reclasses (2)	(3)	—	—	(3)
Balance as of December 31, 2020	<u>10</u>	<u>1</u>	<u>—</u>	<u>11</u>
Charges	6	—	—	6
Utilization/cash payments	(10)	—	—	(10)
Other adjustments & reclasses (2)	(2)	—	—	(2)
Balance as of December 31, 2021	<u>4</u>	<u>1</u>	<u>—</u>	<u>5</u>
Charges	6	4	3	13
Utilization/cash payments	(6)	—	(3)	(9)
Other adjustments & reclasses (2)	(2)	—	—	(2)
Balance as of December 31, 2022	<u>\$ 2</u>	<u>\$ 5</u>	<u>\$ —</u>	<u>\$ 7</u>

(1) The severance and exit costs reserves require the outlay of cash. Inventory write-downs are non-cash items.

(2) The \$2 million in 2022 and 2021 and the \$3 million in 2020 represented severance charges funded from pension plan assets, which were reclassified to Pension and other postretirement liabilities.

2020 Activity

Restructuring actions taken in 2020 were initiated to reduce Kodak's cost structure as part of its commitment to drive sustainable profitability and included various targeted reductions in manufacturing, service, sales, research and development, and other administrative functions.

As a result of these actions, for the year ended December 31, 2020 Kodak recorded \$17 million of charges which were reported as Restructuring costs and other in the accompanying Consolidated Statement of Operations.

The 2020 severance costs related to the elimination of approximately 250 positions, including approximately 160 administrative and 90 manufacturing/service. The geographic composition of these positions included approximately 140 in the U.S. and Canada and 110 throughout the rest of the world.

2021 Activity

Restructuring actions taken in 2021 were initiated to reduce Kodak's cost structure as part of its commitment to drive sustainable profitability and included various targeted reductions in manufacturing, service, sales, research and development, and other administrative functions.

As a result of these actions, for the year ended December 31, 2021 Kodak recorded \$6 million of charges which were reported as Restructuring costs and other in the accompanying Consolidated Statement of Operations.

The 2021 severance costs related to the elimination of approximately 130 positions, including approximately 70 administrative and 60 manufacturing/service positions. The geographic composition of these positions included approximately 70 in the U.S. and Canada and 60 throughout the rest of the world.

2022 Activity

Restructuring actions taken in 2022 were initiated to reduce Kodak's cost structure as part of its commitment to drive sustainable profitability and included ceasing manufacturing of the Electrophotographic Printing Solutions equipment products as well as various targeted reductions in manufacturing, service, sales, research and development and administrative functions.

As a result of these actions, for the year ended December 31, 2022 Kodak recorded \$13 million of charges of which \$10 million were reported as Restructuring costs and other and \$3 million were reported as Cost of revenues in the accompanying Consolidated Statement of Operations.

The 2022 severance costs related to the elimination of approximately 115 positions, including approximately 50 administrative, 40 manufacturing/service and 25 research and development positions. The geographic composition of these positions included approximately 65 in the U.S. and Canada and 50 throughout the rest of the world. The 2022 exit costs relate to the cessation of manufacturing of the Electrophotographic Printing Solutions equipment products and represent contractual obligations associated with open purchase orders as of December 31, 2022.

As a result of these initiatives, the majority of the severance and exit cost liabilities as of December 31, 2022 will be paid during periods through the end of the second quarter of 2023. Approximately \$1 million of the exit cost reserve relates to a liability for which timing of the payment is uncertain.

NOTE 20: RETIREMENT PLANS

Substantially all U.S. employees are covered by a noncontributory defined benefit plan, the Kodak Retirement Income Plan ("KRIP" or the "U.S. Plan"), which is funded by Company contributions to an irrevocable trust fund. The funding policy for KRIP is to contribute amounts sufficient to meet minimum funding requirements as determined by employee benefit and tax laws plus any additional amounts the Company determines to be appropriate. Assets in the trust fund are held for the sole benefit of participating employees and retirees.

For U.S. employees hired prior to March 1999, KRIP's benefits were generally based on a formula recognizing length of service and final average earnings. KRIP included a separate cash balance formula for all U.S. employees hired after February 1999, as well as employees hired prior to that date who opted into the cash balance formula during a special election period. Effective January 1, 2015 the KRIP was amended to provide that all participants accrue benefits under a single, revised cash balance formula (the "Cash Balance Plan"). The Cash Balance Plan credits employees' hypothetical accounts with an amount equal to a specified percentage of their pay, plus interest based on the 30-year Treasury bond rate. In May 2022, the KRIP plan was amended to increase the employees' crediting rates from 9% or 10% of pay based on employee classification to 12% or 13% of pay, retroactive to January 1, 2022. The plan amendment also provided a one-time service credit to eligible employees' cash balance accounts.

Many subsidiaries and branches operating outside the U.S. have defined benefit retirement plans covering substantially all employees. Contributions by Kodak for these plans are typically deposited under government or other fiduciary-type arrangements. Retirement benefits are generally based on contractual agreements that provide for benefit formulas using years of service and/or compensation prior to retirement. The actuarial assumptions used for these plans reflect the diverse economic environments within the various countries in which Kodak operates.

Information on the major funded and unfunded U.S. and Non-U.S. defined benefit pension plans is presented below. The information for the U.S. for all years presented relates to KRIP. The composition of the major Non-U.S. plans may vary from year to year. If the major Non-U.S. plan composition changes, prior year data is conformed to ensure comparability.

Obligations and Funded Status:

The measurement date used to determine the pension obligation for all funded and unfunded U.S. and Non-U.S. defined benefit plans is December 31.

(in millions)	Year Ended December 31, 2022		Year Ended December 31, 2021	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Change in Benefit Obligation				
Projected benefit obligation at beginning of period	\$ 3,132	\$ 816	\$ 3,476	\$ 912
Service cost	13	3	11	3
Interest cost	80	9	47	5
Benefit payments	(294)	(44)	(318)	(48)
Plan Amendments	28	—	—	—
Actuarial (gain) loss	(479)	(165)	(86)	21
Special termination benefits	2	—	2	—
Currency adjustments	—	(42)	—	(77)
Projected benefit obligation at end of period	<u>\$ 2,482</u>	<u>\$ 577</u>	<u>\$ 3,132</u>	<u>\$ 816</u>
Change in Plan Assets				
Fair value of plan assets at beginning of period	\$ 4,105	\$ 626	\$ 3,707	\$ 696
Actual Return on plan assets	(152)	(31)	716	32
Employer contributions	—	5	—	7
Benefit payments	(294)	(44)	(318)	(48)
Currency adjustments	—	(30)	—	(61)
Fair value of plan assets at end of period	<u>\$ 3,659</u>	<u>\$ 526</u>	<u>\$ 4,105</u>	<u>\$ 626</u>
Over (under) funded status at end of period	<u>\$ 1,177</u>	<u>\$ (51)</u>	<u>\$ 973</u>	<u>\$ (190)</u>
Accumulated benefit obligation at end of period	<u>\$ 2,482</u>	<u>\$ 568</u>	<u>\$ 3,130</u>	<u>\$ 800</u>

An actuarial gain of \$479 million related to the U.S. Plan's projected benefit obligation ("PBO") was recognized in 2022, primarily driven by an increase in the discount rate (\$582 million), partially offset by a loss associated with updated mortality assumptions (\$105 million). Additionally, a prior service cost was recognized as a result of a plan amendment (\$28 million). In 2021, a PBO actuarial gain of \$86 million was recognized for the U.S. Plan driven primarily by an increase in the discount rate (\$105 million). The Non-U.S. PBO actuarial gain of \$165 million recognized in 2022 was driven primarily by an increase in the discount rates, whereas the loss in 2021 was driven primarily by changes in inflation and other demographic assumptions partially offset by an increase in discount rates.

The actual return on plan assets for the U.S. Plan was a loss of \$152 million for the year ended December 31, 2022 and a gain of \$716 million for the year ended December 31, 2021. The loss for 2022 reflects lower than expected bond performance due to rising interest rates, and the gain for 2021 reflects higher expected returns for the U.S. private equity and hedge fund portfolios. The total net realized losses from derivative investments for 2022 and 2021 were approximately (\$128) million and (\$23) million, respectively. Refer to discussion below on derivative instruments for further information.

The weighted-average assumptions used to determine the benefit obligation amounts for all major funded and unfunded U.S. and Non-U.S. defined benefit plans were as follows:

	As of December 31,					
	2022		2021		2020	
	U.S.	Non-U.S.	U.S.	Non-U.S.	U.S.	Non-U.S.
Discount rate	5.13%	3.93%	2.54%	1.48%	2.09%	1.01%
Salary increase rate	1.00%	2.71%	1.00%	2.39%	3.50%	1.56%
Interest crediting rate for cash balance plan	4.00%	NA	2.00%	NA	1.75%	NA

Amounts recognized in the Consolidated Statement of Financial Position for all major funded and unfunded U.S. and Non-U.S. defined benefit plans are as follows (in millions):

	As of December 31,			
	2022		2021	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Pension and other postretirement assets	\$ 1,177	\$ 42	\$ 973	\$ 36
Pension and other postretirement liabilities	—	(93)	—	(226)
Net amount recognized	\$ 1,177	\$ (51)	\$ 973	\$ (190)

Information with respect to the major funded and unfunded U.S. and Non-U.S. defined benefit plans with a projected benefit obligation in excess of the fair value of plan assets is as follows (in millions):

	As of December 31,			
	2022		2021	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Projected benefit obligation	\$ —	\$ 209	\$ —	\$ 575
Fair value of plan assets	—	116	—	349

Information with respect to the major funded and unfunded U.S. and Non-U.S. defined benefit plans with an accumulated benefit obligation in excess of the fair value of plan assets is as follows (in millions):

	As of December 31,			
	2022		2021	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Accumulated benefit obligation	\$ —	\$ 201	\$ —	\$ 560
Fair value of plan assets	—	116	—	349

Amounts recognized in accumulated other comprehensive income (loss) in shareholders' equity for all major funded and unfunded U.S. and Non-U.S. defined benefit plans consist of (in millions):

	As of December 31,			
	2022		2021	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Prior service credit	\$ (25)	\$ 2	\$ 6	\$ 2
Net actuarial gain (loss)	594	(43)	445	(177)
Total	\$ 569	\$ (41)	\$ 451	\$ (175)

Other changes in major plan assets and benefit obligations recognized in Other comprehensive income (loss) are as follows (in millions):

	Year Ended December 31,					
	2022		2021		2020	
	U.S.	Non-U.S.	U.S.	Non-U.S.	U.S.	Non-U.S.
Newly established gain (loss)	\$ 149	\$ 120	\$ 635	\$ (4)	\$ —	\$ (38)
Newly established prior service cost	(28)	—	—	—	—	—
Amortization of:						
Prior service credit	(3)	—	(7)	—	(7)	—
Net actuarial loss	—	10	30	9	15	7
Net loss recognized in expense due to settlement	—	—	—	—	9	—
Total income (loss) recognized in Other comprehensive income	\$ 118	\$ 130	\$ 658	\$ 5	\$ 17	\$ (31)

For the year ended December 31, 2022, the U.S. gain consisted of the PBO actuarial gain of \$479 million partially offset by asset actuarial losses of \$330 million and the non-U.S. gain primarily consisted of the PBO actuarial gain of \$165 million partially offset by asset actuarial losses of \$45 million. For the year ended December 31, 2021, the U.S. gain consisted of asset actuarial gains of \$549 million and the PBO actuarial gain of \$86 million.

Pension Income:

Pension income for all defined benefit plans included (in millions):

	Year Ended December 31,					
	2022		2021		2020	
	U.S.	Non-U.S.	U.S.	Non-U.S.	U.S.	Non-U.S.
Major defined benefit plans:						
Service cost	\$ 13	\$ 3	\$ 11	\$ 3	\$ 11	\$ 3
Interest cost	80	9	47	5	86	9
Expected return on plan assets	(178)	(14)	(167)	(15)	(196)	(19)
Amortization of:						
Prior service credit	(3)	—	(7)	—	(7)	—
Actuarial loss	—	10	30	9	15	7
Pension income before special termination benefits	(88)	8	(86)	2	(91)	—
Special termination benefits	2	—	2	—	3	—
Settlement losses	—	—	—	—	9	—
Net pension income for major defined benefit plans	(86)	8	(84)	2	(79)	—
Other plans including unfunded plans	—	—	—	(2)	—	1
Net pension (income), expense	\$ (86)	\$ 8	\$ (84)	\$ —	\$ (79)	\$ 1

The \$9 million settlement loss for the year ended December 31, 2020 was incurred as a result of lump sum payments from KRIP.

The special termination benefits for each of the years ended December 31, 2022, 2021 and 2020 were incurred as a result of Kodak's restructuring actions and, therefore, have been included in Restructuring costs and other in the Consolidated Statement of Operations for those periods.

The weighted-average assumptions used to determine net pension (income) expense for all the major funded and unfunded U.S. and Non-U.S. defined benefit plans were as follows:

	2022		Year Ended December 31, 2021		2020	
	U.S.	Non-U.S.	U.S.	Non-U.S.	U.S.	Non-U.S.
Effective rate for service cost	3.45%	1.60%	2.11%	1.17%	2.97%	1.48%
Effective rate for interest cost	2.97%	1.20%	1.42%	0.70%	2.58%	1.19%
Salary increase rate	1.00%	2.39%	3.50%	1.56%	3.50%	1.72%
Expected long-term rate of return on plan assets	5.30%	2.67%	5.20%	2.56%	6.00%	3.27%
Interest crediting rate for cash balance plan	2.58%	NA	1.75%	NA	2.50%	NA

The expected return on plan assets ("EROA") is a long-term rate of return which is based on a combination of formal asset and liability studies that include forward-looking return expectations given the current asset allocation.

Kodak uses the spot yield curve approach to estimate the service and interest costs by applying the specific spot rates along the yield curve used to determine the benefit obligations to relevant projected cash outflows.

Plan Asset Investment Strategy

The investment strategy underlying the asset allocation for the pension assets is to achieve an optimal return on assets with an acceptable level of risk while providing for the long-term liabilities and maintaining sufficient liquidity to pay current benefits and other cash obligations of the plans. This is primarily achieved by investing in a broad portfolio constructed of various asset classes including equity, debt, real estate, private equity, hedge funds and other assets and instruments. In addition, the U.S. Plan uses derivative investments primarily to hedge liability interest rate risk to U.S. government bonds. Other investment objectives include maintaining broad diversification between and within asset classes and investment managers and managing asset volatility relative to plan liabilities.

Every three years, or when market conditions have changed materially, each of Kodak's major pension plans will undertake an asset allocation or asset and liability modeling study. The asset allocation and expected return on the plans' assets are individually set to provide for benefits and other cash obligations within each country's legal investment constraints.

Actual allocations may vary from the target asset allocations due to market value fluctuations, the length of time it takes to implement changes in strategy, and the timing of cash contributions and cash requirements of the plans. The asset allocations are monitored and are rebalanced in accordance with the policy set forth for each plan.

Plan Asset Risk Management

Kodak evaluates its defined benefit plans' asset portfolios for the existence of significant concentrations of risk. Types of concentrations that are evaluated include, but are not limited to, investment concentrations in a single entity, type of industry, foreign country, individual fund and single investment manager. As of December 31, 2022 two investment management firms (Loomis Sayles and Income Research + Management) each managed 10% of plan assets. In 2021 there were no significant concentrations (defined as greater than 10% of plan assets) of risk in Kodak's defined benefit plan assets.

The Company's weighted-average asset allocations for its major U.S. defined benefit pension plan by asset category, are as follows:

Asset Category	As of December 31,		2022 Target
	2022	2021	
Equity securities	0%	5%	0%
Debt securities	20%	11%	18-24%
Real estate	1%	1%	0%
Cash and cash equivalents	7%	5%	0-10%
Global balanced asset allocation funds	0%	8%	0%
Private equity	30%	26%	23-28%
Hedge funds (1)	42%	44%	46-58%
Total	100%	100%	

- (1) The 2022 target for hedge funds includes a policy allocation to U.S. government bonds that is obtained via treasury futures contracts.

Kodak's weighted-average asset allocations for its major Non-U.S. defined benefit pension plans by asset category, are as follows:

Asset Category	As of December 31,		2022 Target
	2022	2021	
Equity securities	6%	6%	0-10%
Debt securities	16%	17%	10-20%
Real estate	2%	2%	0-5%
Cash and cash equivalents	4%	2%	0-5%
Global balanced asset allocation funds	0%	0%	0%
Hedge Funds	4%	5%	0-10%
Private equity	8%	7%	0-10%
Insurance contracts	60%	61%	25-75%
Total	100%	100%	

Derivative Investments

The U.S. Plan derivative instruments consist of direct investments in exchange traded futures contracts. Government bond exposure is obtained via U.S. government bond futures. Foreign currency futures contracts are used to partially hedge foreign currency risk.

As of December 31, 2022 and 2021, the notional amount for exchange traded futures contracts approximated \$389 million and \$1.0 billion, respectively. Realized gains and losses from these derivative investments are included in the gain on plan assets balance. The total fair value of these derivative instruments at December 31, 2022 and 2021 was \$0 million and \$10 million, respectively, which represents the unrealized gains and losses on these contracts and is included in the derivative line items in the table of plan assets below. The U.S. defined benefit pension plan is required to maintain cash on deposit to collateralize its obligations under its futures contracts. As of December 31, 2022 and 2021, approximately \$9 million and \$17 million, respectively, were on deposit in cash and Treasury bills to fulfill these requirements and are included in the cash and cash equivalents asset class in the table below.

The U.S. Plan invests in a diversified portfolio of hedge funds that may utilize derivative instruments to execute their investment strategy. Any gains or losses, as well as changes in the fair value of derivative investments held by the hedge fund, are included in the hedge fund's net asset value.

Fair Value Measurements

Kodak's plan assets are accounted for at fair value and are classified within the fair value hierarchy based on the lowest level of input that is significant to the fair value measurement, with the exception of investments for which fair value is measured using the net asset value ("NAV") per share expedient. Kodak's assessment of the significance of a particular input to the fair value measurement requires judgment and may affect the valuation of fair value of assets and their placement within the fair value hierarchy levels.

The fair value of Kodak's U.S. defined benefit pension plan assets at December 31, 2022 and 2021 by asset class are presented in the tables below:

U.S. Plan December 31, 2022

(in millions)	U.S.				Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Measured at NAV	
Cash and cash equivalents	\$ 251	\$ —	\$ —	\$ —	\$ 251
Debt Securities:					
Government bonds	—	39	—	—	39
Investment grade bonds	—	717	—	—	717
Real estate	—	—	—	29	29
Other:					
Hedge funds	—	—	—	1,528	1,528
Private Equity	—	—	3	1,092	1,095
	<u>\$ 251</u>	<u>\$ 756</u>	<u>\$ 3</u>	<u>\$ 2,649</u>	<u>\$ 3,659</u>

U.S. Plan
December 31, 2021

	U.S.				
(in millions)	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Measured at NAV	Total
Cash and cash equivalents	\$ 202	\$ —	\$ —	\$ —	\$ 202
Global equity securities funds	—	—	—	201	201
Debt Securities:					
Investment grade bonds	—	440	—	—	440
Real estate	—	—	—	36	36
Global balanced asset allocation funds	—	—	—	327	327
Other:					
Hedge funds	—	6	—	1,801	1,807
Private Equity	—	—	—	1,082	1,082
Derivatives with unrealized gains	10	—	—	—	10
	<u>\$ 212</u>	<u>\$ 446</u>	<u>\$ —</u>	<u>\$ 3,447</u>	<u>\$ 4,105</u>

Assets not utilizing the NAV per share expedient are valued as follows:

- (1) Cash and cash equivalents are primarily held in short term investment funds and are used for benefit and fee payments, as well as for margin and liquidity requirements associated with the U.S. Plan's derivative instrument contracts.
- (2) Debt securities are traded on an active market and are valued using a market approach based on the closing price on the last business day of the year.

Investments Valued at NAV

Kodak performs an investment-by-investment analysis to determine if the investment meets the requirements to be measured at NAV. For investments with lagged pricing, Kodak uses the latest available net asset values and considers expected return and other relevant material events for the year-end valuation of these investments.

The total fair value, unfunded commitments and redemption provisions for the U.S defined benefit pension plan's investments valued at NAV are as follows:

Investments Valued at NAV at December 31, 2022

(in millions):	Fair Value	Unfunded Commitments	Redemption Frequency	Redemption Notice Period
Real estate	\$ 29	\$ —	N/A	N/A
Private equity	1,092	229	N/A	N/A
Hedge Funds	1,528	26	Bi-Monthly, Monthly, Quarterly, Semi-Annual, and Annual	5-365 days
Total	\$ 2,649	\$ 255		

Investments Valued at NAV at December 31, 2021

(in millions):	Fair Value	Unfunded Commitments	Redemption Frequency	Redemption Notice Period
Global equity securities fund	\$ 201	\$ —	Monthly, Quarterly	6-90 days
Real estate	36	—	N/A	N/A
Global balanced asset allocation funds	327	—	Monthly	6-15 days
Private equity	1,082	262	N/A	N/A
Hedge Funds	1,801	26	Bi-Monthly, Monthly, Quarterly, Semi-Annual, and Annual	5-365 days
Total	\$ 3,447	\$ 288		

Global Equity Securities Funds hold a broad diversified portfolio of U.S. equity, developed international equity, and emerging markets equity securities. These investments are primarily valued by the fund administrator based on a market or income valuation methodology depending on the specific type of security or instrument held. The U.S. Plan redeemed its investment in the Global Equity Securities Funds in 2022.

Real estate investments primarily include investments in limited partnerships that invest in office, industrial, retail and apartment properties. Investments are primarily valued by the fund manager based on independent appraisals, discounted cash flow models, cost and comparable market transactions. The term of each fund is typically 10 or more years and the fund's investors do not have an option to redeem their interest in the fund but receive distributions through the liquidation of the underlying investments.

The Global Balanced Asset Allocation Fund investments are commingled funds that hold a diversified portfolio of passive market exposures, including equities, debt, currencies and commodities that uses an equal risk parity allocation strategy. These investments are primarily valued by the fund manager based on a market or income valuation methodology depending on the specific type of security or instrument held. The U.S. Plan redeemed its investment in the Global Balanced Asset Allocation Funds in 2022.

Private equity investments are primarily comprised of direct limited partnerships and fund-of-fund investments that invest in distressed investments, venture capital, leveraged buyouts and special situations. Private equity investments are valued by the fund manager primarily based on independent appraisals, discounted cash flow models, cost, and comparable market transactions. The term of each fund is typically 10 or more years and the fund's investors do not have an option to redeem their interest in the fund. The investors in the fund receive distributions through the liquidation of the underlying investments in the fund.

The U.S. Plan invests in a portfolio of hedge funds to supplement the return generated by its exchange traded futures contracts as well as in a separate portfolio of hedge funds where the objective is to seek a higher absolute return. Hedge fund investments are made through direct investments in individual hedge funds. The hedge fund investments substantially consist of a diversified portfolio of hedge funds that use equity, debt, commodity, currency strategies and derivative instruments. The U.S. defined benefit pension plan evaluates several factors for investing in hedge funds including investment strategy, return, risk, liquidity, correlation to other funds and the number of funds to achieve a diversified portfolio of hedge funds.

Hedge funds are typically valued by each fund's third-party fund administrator based upon the valuation of the underlying securities and instruments, primarily by applying a market or income valuation methodology as appropriate depending on the specific type of security or instrument held. The U.S. defined benefit pension plan maintains cash and Treasury bills as liquidity reserves that serve as variation margin for the U.S. Treasury futures contracts directly held by the U. S. Plan to hedge its liability duration. Approximately \$90 million and \$87 million of cash liquidity reserves associated with hedge funds as of December 31, 2022 and 2021, respectively, are included in the cash and cash equivalents asset class in the table above.

The tables below summarize Kodak's U.S. Plan investments in hedge funds by type for those investments valued at NAV:

**U.S. Plan:
December 31, 2022**

(in millions)	<u>Net Asset Value</u>	<u>Redemption Frequency</u>	<u>Redemption Notice Period</u>
Multi-strategy hedge funds	\$ 495	Quarterly	45-90 days
Relative value hedge funds	331	Bi-monthly, Quarterly	6-120 days
Directional hedge funds	167	Monthly	5 days
Equity long/short hedge funds	227	Quarterly	45-90 days
Sector specialist hedge funds	135	Quarterly, Semi-Annually	60-90 days
Long-biased hedge funds	159	Quarterly, Annually	60-90 days
Event driven hedge funds	14	Quarterly	90 days
	<u>\$ 1,528</u>		

December 31, 2021

(in millions)	Net Asset Value	Redemption Frequency	Redemption Notice Period
Multi-strategy hedge funds	\$ 653	Monthly, Quarterly	15-90 days
Relative value hedge funds	354	Bi-monthly, Quarterly	6-365 days
Directional hedge funds	260	Bi-monthly, Quarterly	5-30 days
Equity long/short hedge funds	225	Quarterly	45-90 days
Sector specialist hedge funds	107	Quarterly	90 days
Long-biased hedge funds	138	Quarterly, Annually	60-75 days
Event driven hedge funds	64	Quarterly	90 days
	<u>\$ 1,801</u>		

Hedge funds typically have the right to restrict redemption requests beyond Kodak's control. In these cases, redemptions may extend beyond the general redemption terms outlined in the table above. Certain hedge fund investments have no redemption rights and will become liquid only upon sale by the hedge fund managers. As of December 31, 2022 and 2021, these investments represented approximately 1% and 5% of the hedge funds investments valued at NAV, respectively.

Liquidity

Approximately 29% of total U.S. Plan assets as of December 31, 2022 are invested in real estate funds, private equity funds and other investments where the U.S. Plan receives distributions through the liquidation of the underlying investments. Liquidity of U.S. Plan assets is managed to minimize the likelihood that these investments would need to be sold to cover benefit payments, derivative losses, or any other short-term need.

The total unfunded commitments, if and when they are called over the term of each investment, are expected to be funded by the available liquidity in the U.S. Plan consistent with historical experience.

The fair value of Kodak's major non-U.S. defined benefit pension plans assets at December 31, 2022 and 2021 by asset class are presented in the tables below:

**Major Non-U.S. Plans
December 31, 2022**

(in millions)	Non - U.S.				Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Measured at NAV	
Cash and cash equivalents	\$ 21	\$ —	\$ —	\$ —	\$ 21
Equity securities	31	—	—	—	31
Debt securities:					
Investment grade bonds	35	45	—	—	80
Global high yield & emerging market debt	2	—	—	—	2
Real estate	—	—	—	11	11
Other:					
Hedge Funds	—	—	—	20	20
Private equity	—	—	—	43	43
Insurance contracts	—	29	289	—	318
	<u>\$ 89</u>	<u>\$ 74</u>	<u>\$ 289</u>	<u>\$ 74</u>	<u>\$ 526</u>

**Major Non-U.S. Plans
December 31, 2021**

(in millions)	Non - U.S.				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Measured at NAV	Total
Cash and cash equivalents	\$ 13	\$ —	\$ —	\$ —	\$ 13
Equity securities	38	—	—	—	38
Debt securities:					
Investment grade bonds	49	56	—	—	105
Global high yield & emerging market debt	2	—	—	—	2
Real estate	—	—	—	12	12
Other:					
Hedge funds	—	—	—	32	32
Private equity	—	—	—	42	42
Insurance contracts	—	40	342	—	382
	<u>\$ 102</u>	<u>\$ 96</u>	<u>\$ 342</u>	<u>\$ 86</u>	<u>\$ 626</u>

For Kodak's major non-U.S. defined benefit pension plans, equity investments are invested broadly in local equity, developed international and emerging markets. Fixed income investments are comprised primarily of government and investment grade corporate bonds. Real estate investments primarily include investments in limited partnerships that invest in office, industrial, and retail properties. Global Balanced Asset Allocation investments are commingled funds that hold a diversified portfolio of passive market exposures, including equities, debt, currencies and commodities. Hedge fund investments are comprised of a diversified portfolio of hedge funds using equity, debt, commodity and currency instruments. Private equity investments are comprised of limited partnerships and fund-of-fund investments that invest in distressed investments, venture capital and leveraged buyouts. Insurance contracts are typically annuities from life insurance companies covering specific pension obligations.

For investments in real estate and private equity funds, the investors do not have an option to redeem their interest in the fund. The investors in the fund receive distributions through the liquidation of the underlying investments in the fund. There are no material unfunded commitments as of December 31, 2022 and 2021.

Of the December 31, 2022 and 2021 investments shown in the major Non-U.S. plans table above, there are no material derivative exposures.

The following is a reconciliation of the beginning and ending balances of level 3 assets of Kodak's major U.S. and non-U.S. defined benefit pension plans:

	U.S.				Balance at December 31, 2022
	Net Realized and Unrealized Gains				
(in millions)	Balance at January 1, 2022	Relating to Assets Still Held	Relating to Assets Sold During the Period	Net Purchases, Sales and Settlements	
Private Equity	—	—	—	3	3
Total	\$ —	\$ —	\$ —	\$ 3	\$ 3

	U.S.				Balance at December 31, 2021
	Net Realized and Unrealized Gains				
(in millions)	Balance at January 1, 2021	Relating to Assets Still Held	Relating to Assets Sold During the Period	Net Purchases, Sales and Settlements	
Private Equity	5	(5)	—	—	—
Total	\$ 5	\$ (5)	\$ —	\$ —	\$ —

	U.S.				Balance at December 31, 2020
	Net Realized and Unrealized Gains				
(in millions)	Balance at January 1, 2020	Relating to Assets Still Held	Relating to Assets Sold During the Period	Net Purchases, Sales and Settlements	
Private Equity	7	(2)	—	—	5
Total	\$ 7	\$ (2)	\$ —	\$ —	\$ 5

	Non - U.S.				
	Net Realized and Unrealized Gains				
	Balance at January 1, 2022	Relating to Assets Still Held	Relating to Assets Sold During the Period	Net Purchases, Sales and Settlements	Balance at December 31, 2022
Insurance Contracts	342	(53)	—	—	289
Total	\$ 342	\$ (53)	\$ —	\$ —	\$ 289

	Non - U.S.				
	Net Realized and Unrealized Gains				
	Balance at January 1, 2021	Relating to Assets Still Held	Relating to Assets Sold During the Period	Net Purchases, Sales and Settlements	Balance at December 31, 2021
Insurance Contracts	291	(37)	—	88	342
Total	\$ 291	\$ (37)	\$ —	\$ 88	\$ 342

	Non - U.S.				
	Net Realized and Unrealized Gains				
	Balance at January 1, 2020	Relating to Assets Still Held	Relating to Assets Sold During the Period	Net Purchases, Sales and Settlements	Balance at December 31, 2020
Insurance Contracts	273	18	—	—	291
Total	\$ 273	\$ 18	\$ —	\$ —	\$ 291

The following pension benefit payments, which reflect expected future service, are expected to be paid (in millions):

	U.S.	Non-U.S.
2023	\$ 290	\$ 43
2024	258	42
2025	248	41
2026	237	40
2027	226	39
2028 - 2032	976	182

NOTE 21: OTHER POSTRETIREMENT BENEFITS

In Canada, Kodak provides medical, dental, life insurance, and survivor income benefits to eligible retirees. The plan is closed to new participants. Information on the Canada other postretirement benefit plan is presented below.

The measurement date used to determine the net benefit obligation for the Canada other postretirement benefit plan is December 31.

Changes in Kodak's benefit obligation and funded status were as follows (in millions):

	Year Ended December 31,	
	2022	2021
Net benefit obligation at beginning of period	\$ 52	\$ 58
Interest cost	1	1
Actuarial (gain) loss	(7)	(5)
Benefit payments	(3)	(2)
Net benefit obligation at end of period	<u>43</u>	<u>52</u>
Underfunded status at end of period	(43)	(52)

Amounts recognized in the Consolidated Statement of Financial Position consist of (in millions):

	As of December 31,	
	2022	2021
Other current liabilities	\$ (3)	\$ (3)
Pension and other postretirement liabilities	(40)	(49)
	<u>\$ (43)</u>	<u>\$ (52)</u>

Amounts recognized in Accumulated other comprehensive loss consist of (in millions):

	As of December 31,	
	2022	2021
Net actuarial gain	\$ 11	\$ 4

Changes in benefit obligations recognized in Other comprehensive loss (income) consist of (in millions):

	Year Ended December 31,	
	2022	2021
Newly established gain	\$ 7	\$ 5
Total gain recognized in Other comprehensive income	<u>7</u>	<u>5</u>

Other postretirement benefit cost included:

	Year Ended December 31,		
	2022	2021	2020
Components of net postretirement benefit cost:			
Service cost	\$ —	\$ —	\$ —
Interest cost	1	1	1
Other postretirement benefit cost from continuing operations	\$ 1	\$ 1	\$ 1

The weighted-average assumptions used to determine the net benefit obligations were as follows:

	As of December 31,	
	2022	2021
Discount rate	5.15%	2.97%
Salary increase rate	2.10%	1.85%

The weighted-average assumptions used to determine the net postretirement benefit cost were as follows:

	Year Ended December 31,		
	2022	2021	2020
Effective rate for interest cost	2.53%	1.81%	2.78%
Salary increase rate	1.85%	1.70%	1.80%

The weighted-average assumed healthcare cost trend rates used to compute the other postretirement amounts were as follows:

	2022	2021
	Healthcare cost trend	5.64%
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	3.57%	3.32%
Year that the rate reaches the ultimate trend rate	2043	2041

The following other postretirement benefits, which reflect expected future service, are expected to be paid (in millions):

2023	\$ 3
2024	3
2025	3
2026	3
2027	3
2028 - 2032	12

NOTE 22: EARNINGS PER SHARE

Basic earnings per share are calculated using the weighted-average number of shares of common stock outstanding during the period. Diluted earnings per share calculations include any dilutive effect of potential common shares. In periods with a net loss from continuing operations, diluted earnings per share are calculated using weighted-average basic shares for that period, as utilizing diluted shares would be anti-dilutive to loss per share.

A reconciliation of the amounts used to calculate basic and diluted earnings per share for the years ended December 31, 2022, 2021 and 2020 follows:

(in millions)	Year Ended December 31,		
	2022	2021	2020
Income (loss) from continuing operations attributable to Eastman Kodak Company	\$ 26	\$ 24	\$ (544)
Less: Preferred Stock cash and accrued dividends	(4)	(4)	(11)
Less: Preferred Stock in-kind dividends	(5)	(4)	—
Less: Preferred Stock deemed dividends	(2)	(3)	(9)
Plus: Expiration of Series A embedded derivative	—	11	—
Less: Earnings attributable to Series C Preferred shareholders	(2)	(2)	—
Income (loss) from continuing operations available to common shareholders - basic and diluted	<u>\$ 13</u>	<u>\$ 22</u>	<u>\$ (564)</u>

(in millions)	Year Ended December 31,		
	2022	2021	2020
Net income (loss) attributable to Eastman Kodak Company	\$ 26	\$ 24	\$ (541)
Less: Preferred Stock cash and accrued dividends	(4)	(4)	(11)
Less: Preferred Stock in-kind dividends	(5)	(4)	—
Less: Preferred Stock deemed dividends	(2)	(3)	(9)
Plus: Expiration of Series A embedded derivative	—	11	—
Less: Earnings attributable to Series C Preferred shareholders	(2)	(2)	—
Net income (loss) available to common shareholders - basic and diluted	<u>\$ 13</u>	<u>\$ 22</u>	<u>\$ (561)</u>

	Year Ended December 31,		
	2022	2021	2020
Weighted-average common shares outstanding - basic	78.9	78.4	57.4
Effect of dilutive securities:			
Unvested restricted stock units and awards	0.6	0.1	—
Stock options	1.1	2.0	—
Weighted-average common shares outstanding - diluted	<u>80.6</u>	<u>80.5</u>	<u>57.4</u>

The computation of diluted earnings per share for the year ended December 31, 2022 excluded the impact of (1) the assumed conversion of \$25 million of 2021 Convertible Notes, (2) the assumed conversion of 1.0 million shares of Series B Preferred Stock, (3) the assumed conversion of 1.1 million shares of Series C Preferred Stock and (4) the assumed exercise of 3.3 million outstanding employee stock options in each case because they would have been anti-dilutive.

The computation of diluted earnings per share for the year ended December 31, 2021 excluded the impact of (1) the assumed conversion of \$25 million of 2021 Convertible Notes, (2) the assumed conversion of 1.0 million shares of Series B Preferred Stock, (3) the assumed conversion of 1.0 million shares of Series C Preferred Stock and (4) the assumed exercise of 2.9 million outstanding employee stock options in each case because they would have been anti-dilutive.

As a result of the loss from continuing operations available to common shareholders for the year ended December 31, 2020, Kodak calculated diluted earnings per share using weighted-average basic shares outstanding. If Kodak reported earnings from continuing operations available to common shareholders for the year ended December 31, 2020 the calculation of diluted earnings per share would have included the assumed vesting of 0.6 million unvested restricted stock units and the exercise of 0.7 million stock options.

The computation of diluted earnings per share for the year ended December 31, 2020 excluded the impact of (1) the assumed conversion of 2.0 million shares of Series A Preferred Stock, and (2) the assumed exercise of 4.0 million outstanding employee stock options in each case because they would have been anti-dilutive.

NOTE 23: STOCK-BASED COMPENSATION

Kodak's stock incentive plan is the 2013 Omnibus Incentive Plan (as restated and further amended, the "2013 Plan"). The 2013 Plan is administered by the Compensation, Nominating and Governance Committee of the Board of Directors.

Officers, directors and employees of the Company and its consolidated subsidiaries are eligible to receive awards. Stock options are generally non-qualified, are at exercise prices equal to or greater than the closing price of Kodak's stock on the date of grant and expire seven years or ten years after the grant date. Stock-based compensation awards granted under Kodak's stock incentive plan are generally subject to a three-year vesting period from the date of grant, or a later date as determined by the Compensation, Nominating and Governance Committee. Awards are subject to settlement in newly-issued shares of common stock. Unless sooner terminated by the Compensation, Nominating and Governance Committee, no awards may be granted under the 2013 Plan after May 19, 2031.

The maximum number of shares of common stock available for grant under the 2013 Plan is 13.0 million. For stock option grants awarded on or prior to May 19, 2021, for the number of shares available for grant under the 2013 Plan, a stock option counted as a fraction of a share, based on the fair market value of the stock option relative to the closing stock price on the date of grant. For stock option awards granted after May 19, 2021, a stock option counts as one share. Each restricted stock unit and restricted stock award counts as one share. The total number of shares of common stock registered for issuance under the 2013 Plan is approximately 13.5 million. In addition, under the 2013 Plan, the maximum number of shares available for the grant of incentive stock options is 2.0 million shares. The maximum number of shares as to which stock options or stock appreciation rights may be granted to any one person under the 2013 Plan in any calendar year is 2.5 million shares.

The maximum number of awards that may be granted to any non-employee director under the 2013 Plan in any calendar year may not exceed a number of awards with a grant date fair value of \$450,000, computed as of the grant date.

Compensation expense is recognized on a straight-line basis over the service or performance period for each separately vesting tranche of the award and is adjusted for actual forfeitures before vesting. Kodak assesses the likelihood that performance-based shares will be earned based on the probability of meeting the performance criteria. For those performance-based awards that are deemed probable of achievement, expense is recorded, and for those awards that are deemed not probable of achievement, no expense is recorded. Kodak assesses the probability of achievement each quarter.

Restricted Stock Units and Restricted Stock awards

Restricted stock units and restricted stock awards are payable in shares of the Company common stock upon vesting. The fair value is based on the closing market price of the Company's stock on the grant date. Compensation cost related to restricted stock units and restricted stock awards was \$4 million, \$5 million and \$1 million for the years ended December 31, 2022, 2021 and 2020, respectively.

The weighted average grant date fair value of restricted stock units and awards granted for the years ended December 31, 2022, 2021 and 2020 was \$4.60, \$8.50 and \$2.91, respectively. The total fair value of restricted stock units and awards that vested was \$5 million, \$6 million and \$2 million for the years ended December 31, 2022, 2021 and 2020. As of December 31, 2022, there was \$3 million of unrecognized compensation cost related to restricted stock units. The cost is expected to be recognized over a weighted average period of 1.3 years.

The following table summarizes information about unvested restricted stock unit and award activity for the year ended December 31, 2022:

	Restricted Stock Units/Awards	Weighted- Average Grant Date Fair Values
Outstanding on December 31, 2021	872,877	\$ 8.10
Granted	651,375	\$ 4.60
Vested	361,708	\$ 5.04
Forfeited	21,667	\$ 5.52
Outstanding on December 31, 2022	1,140,877	\$ 6.30

In addition to the outstanding unvested restricted stock units and awards per the above table, there are also 302,099 vested restricted stock units outstanding as of December 31, 2022 with a weighted average grant date fair value of \$6.45.

Stock Options

The following table summarizes information about stock option activity for the year ended December 31, 2022:

	Shares Under Option	Weighted Exercise Price Per Share	Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (\$ millions)
Outstanding on December 31, 2021	7,234,449	\$ 7.29		
Expired	330,138	\$ 14.24		
Exercised	20,000	\$ 3.03		
Outstanding on December 31, 2022	6,884,311	\$ 6.97	2.73	\$ —
Exercisable on December 31, 2022	6,745,963	\$ 6.99	2.72	\$ —
Expected to vest December 31, 2022	138,348	\$ 5.57	3.14	\$ —

The aggregate intrinsic value represents the total pretax intrinsic value that option holders would have received had all option holders exercised their options on the last trading day of the year. The aggregate intrinsic value is the difference between the Kodak closing stock price on the last trading day of the year and the exercise price, multiplied by the number of in-the-money options. The intrinsic values of options outstanding, exercisable or expected to vest as of December 31, 2022 were each less than \$1 million.

The weighted average grant date fair value of options granted for the year ended December 31, 2020 was \$5.86. There were no options granted in the years ended December 31, 2022 and 2021. The total fair value of options that vested during both the years ended December 31, 2022 and 2021 was \$2 million. The total value of the options that vested during the year ended December 31, 2020 was \$13 million. Compensation cost related to stock options for the years ended December 31, 2022, 2021 and 2020 was \$1 million, \$2 million and \$14 million, respectively.

As of December 31, 2022, there was less than \$1 million of unrecognized compensation cost related to stock options, which will be recognized during 2023.

On February 26, 2021 James V. Continenza, Executive Chairman and Chief Executive Officer of Kodak, and the Company entered into an Executive Chairman and CEO Agreement, as amended on November 30, 2022 (the "Employment Agreement"). The Employment Agreement is effective for a three-year period beginning on February 26, 2021. Pursuant to the Employment Agreement, Mr. Continenza will not have the right to exercise any stock options granted to him in February 2019 or July 2020 to the extent that, after giving effect to the issuance of the Company's common stock resulting from such exercise, Mr. Continenza (together with his affiliates and any person acting as a group), would beneficially own more than 4.99% of the then issued and outstanding shares of Common Stock (the "Beneficial Ownership Limitation"). The Beneficial Ownership Limitation shall cease and be of no further force and effect upon a Change of Control (as such term is defined in the Company's Amended and Restated 2013 Omnibus Incentive Plan). The restrictions on the exercisability of previous stock option awards were a modification of the original awards. As the February 2019 and July 2020 stock options were fully vested prior to the modification date and there was no incremental value provided in the modification, no additional compensation expense was recognized. Also pursuant to the Employment Agreement, Mr. Continenza was granted 200,000 fully vested restricted stock units. The Company recognized \$2 million of stock-based compensation expense associated with the grant of restricted stock units.

The Company issued stock-based compensation grants for 2.4 million stock options on July 27, 2020. The terms of 1.8 million of the options awarded on July 27, 2020 provided for immediate vesting or vesting upon conversion of the 2019 Convertible Notes. As 100% of the 2019 Convertible Notes were converted during the three months ended September 30, 2020, the 1.8 million options with accelerated vesting terms vested in that same period. The remaining 0.6 million options provide for vesting terms of between two and three years.

The valuation of the stock options granted on July 27, 2020 resulted in approximately \$12.6 million of compensation expense being reported in Selling, general and administrative expenses in the Consolidated Statement of Operations in the year ended December 31, 2020.

There were less than 1 million options exercised in the years ended December 31, 2022 and 2021 and approximately 2.0 million options exercised in the year ended December 31, 2020. The options exercised in 2020 included 0.3 million options exercised by ex-employees of Kodak that had previously been forfeited. The Company issued shares to the ex-employees in exchange for proceeds based on the exercise prices of the forfeited options. The Company is accounting for the exercise of the forfeited options as a modification of the original awards.

The Company recovered \$3.6 million during the three months ended December 31, 2020 from certain of the ex-employees and received a \$2.0 million refund of withholding taxes on behalf of those ex-employees in the year ended December 31, 2021.

The Company recognized compensation expense of approximately \$5.1 million in the three months ended September 30, 2020 related to the 0.3 million previously forfeited options, representing the fair value of the shares issued to the ex-employees less the exercise proceeds received from the ex-employees. Stock compensation expense, reported in Selling, general and administrative expenses in the Consolidated Statement of Operations, was reduced by \$4.6 million in the three months ended December 31, 2020, representing the cash received for certain of the erroneous grants and the refund of withholding taxes due on behalf of the ex-employees. Income recognized in excess of the original stock compensation expense recorded for each individual grant (approximately \$1.0 million) was recognized in Other operating income, net in the Consolidated Statement of Operations.

Other than for the awards granted on July 27, 2020, Kodak utilizes the Black-Scholes option valuation model to estimate the fair value of stock options.

The expected term of options granted is the period of time the options are expected to be outstanding and is calculated using a simplified method based on the option's vesting period and original contractual term. The Company uses the historical volatility of the Company's stock to estimate expected volatility. The risk-free rate was based on the yield on U.S. Treasury notes with a term equal to the option's expected term.

The following inputs were used for the valuation of option grants issued in the year ended December 31, 2020 (there were no stock option grants issued in the years ended December 31, 2022 and 2021):

	Year Ended December 31, 2020
Weighted-average fair value of options granted	\$ 1.50
Weighted-average risk-free interest rate	2.43%
Expected option lives (in years)	3.7
Weighted-average volatility	98%
Expected dividend yield	0.00%

Given the volatility of the Company's stock price in the third quarter of 2020, the Company utilized a lattice-based valuation model to value the time-based vesting awards granted July 27, 2020 and a Monte Carlo simulation valuation model to value the options granted on July 27, 2020 which vested upon conversion of the 2019 Convertible Notes.

The following inputs were used in the lattice-based valuation of the July 27, 2020 option grants:

	July 27, 2020 Option Awards
Weighted-average fair value of options granted	\$ 6.57
Range of risk-free interest rates	0.11% - 0.30%
Weighted-average term (in years)	5.57
Weighted-average volatility	98%
Weighted-average expected dividend yield	0.00%

NOTE 24: SHAREHOLDERS' EQUITY

The Company has 560 million shares of authorized stock, consisting of: (i) 500 million shares of common stock, par value \$0.01 per share, and (ii) 60 million shares of preferred stock, no par value, issuable in one or more series. As of December 31, 2022 and 2021 there were 79.1 million and 78.7 million shares of common stock outstanding, respectively, 1.0 million shares of Series B preferred stock issued and outstanding, and 1.1 million and 1.0 million shares of Series C preferred stock issued and outstanding, respectively.

Treasury Stock

Treasury stock consisted of approximately 0.9 million shares and 0.8 million shares at December 31, 2022 and 2021, respectively.

Registration Statements

On August 10, 2021, the Company filed a Registration Statement on Form S-3 (Registration No. 254352) to register for possible resale from time to time of up to 44,490,032 shares of common stock, subject to adjustments for stock splits, stock dividends and reclassifications and similar transactions (the "Resale Shares"). The Company registered the Resale Shares to satisfy its obligations under the following agreements:

- (1) A registration rights agreement (the "Backstop Registration Rights Agreement"), dated as of September 3, 2013, between the Company and GSO Capital Partners LP, on behalf of various managed funds, BlueMountain Capital Management, LLC, on behalf of various managed funds, George Karfunkel, United Equities Commodities Company, Momar Corporation and Contrarian Capital Management, LLC, on behalf of Contrarian Funds, LLC, which, prior to the expiration of the Backstop Registration Rights Agreement on October 16, 2021, required the registration of certain shares of common stock.
- (2) A Series A Preferred Stock repurchase and exchange agreement, dated as of February 26, 2021, with Southeastern Asset Management, Inc. ("Southeastern") and Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust, which are investment funds managed by Southeastern (such investment funds, collectively, the "Purchasers"), extending the registration rights provided under a registration rights agreement, dated as of November 15, 2016, with Southeastern and the Purchasers, to shares of the Company's common stock issuable upon conversion of 1,000,000 shares of Series B Preferred Stock (as defined herein) issued thereunder.

- (3) A registration rights agreement, dated as of February 26, 2021, with GO EK Ventures IV, LLC (the "Investor"), a fund managed by Grand Oaks Capital, providing the Investor with registration rights in respect of shares of the Company's common stock issuable upon conversion of 1,000,000 shares of Series C Preferred Stock (as defined herein) issued pursuant to a Series C Preferred Stock purchase agreement, dated as of February 26, 2021, with the Investor; and
- (4) A securities registration rights agreement, dated as of February 26, 2021, with certain funds affiliated with Kennedy Lewis Investment Management LLC (the "Buyers"), providing the Buyers with registration rights in respect of (i) 1,000,000 shares of the Company's common stock and (ii) shares of the Company's common stock issuable upon conversion of \$25,000,000 aggregate principal amount of the Company's 5.0% unsecured convertible promissory notes due May 28, 2026, in each case, issued in a private placement transaction pursuant to a securities purchase agreement, dated as of February 26, 2021, with the Buyers.

On August 10, 2021, the Company filed a shelf Registration Statement on Form S-3 (Registration No. 254353) for the offer and sale of securities from time to time in one or more offerings of up to \$500,000,000 of common stock, preferred stock, debt securities, warrants, depositary shares, purchase contracts, guarantees and units. The Company would file a prospectus supplement to include the specific terms of any offering or sale under this shelf registration statement. At December 31, 2022 the Company had not made any offerings or sales of securities pursuant to this registration statement.

NOTE 25: OTHER COMPREHENSIVE INCOME (LOSS)

The changes in Other comprehensive income (loss) by component, were as follows:

(in millions)	Year Ended December 31,		
	2022	2021	2020
Currency translation adjustments			
Currency translation adjustments	\$ (12)	\$ 6	\$ (16)
Pension and other postretirement benefit plan changes			
Newly established net actuarial gain (loss)	277	632	(34)
Newly established prior service cost	(28)	—	—
Tax benefit	—	—	—
Newly established net actuarial loss, net of tax	249	632	(34)
Reclassification adjustments:			
Amortization of prior service credit	(a) (4)	(7)	(7)
Amortization of actuarial losses	(a) 8	37	19
Recognition of gains (losses) due to settlements and curtailments	(a) —	(1)	9
Total reclassification adjustments	4	29	21
Tax provision	—	—	—
Reclassification adjustments, net of tax	4	29	21
Pension and other postretirement benefit plan changes, net of tax	253	661	(13)
Other comprehensive loss	\$ 241	\$ 667	\$ (29)

- (a) Reclassified to Pension income - refer to Note 20, "Retirement Plans" and Note 21, "Other Postretirement Benefits" for additional information.

NOTE 26: ACCUMULATED OTHER COMPREHENSIVE INCOME

Accumulated other comprehensive income (loss) is composed of the following:

(in millions)	As of December 31,	
	2022	2021
Currency translation adjustments	\$ (112)	\$ (100)
Pension and other postretirement benefit plan changes	574	321
Ending balance	\$ 462	\$ 221

NOTE 27: SEGMENT INFORMATION

Kodak has four reportable segments: Traditional Printing, Digital Printing, Advanced Materials and Chemicals and Brand. A description of Kodak's reportable segments follows.

Traditional Printing: The Traditional Printing segment is comprised of Prepress Solutions.

Digital Printing: The Digital Printing segment is comprised of four lines of business: the Electrophotographic Printing Solutions business, the Prosper business, the Versamark business and the Software business.

Advanced Materials and Chemicals: The Advanced Materials and Chemicals segment is comprised of four lines of business: Industrial Film and Chemicals, Motion Picture, Advanced Materials and Functional Printing and KSB. KSB was sold to Swiss Post Solutions in December 2020.

Brand: The Brand segment contains the brand licensing business.

All Other: All Other is comprised of the operations of the Eastman Business Park, a more than 1,200 acre technology center and industrial complex.

Segment financial information is shown below. Asset information by segment is not disclosed as this information is not separately identified and reported to the Chief Operating Decision Maker.

Net Revenues from Continuing Operations by Reportable Segment

(in millions)	Year Ended December 31,		
	2022	2021	2020
Traditional Printing	\$ 711	\$ 659	\$ 592
Digital Printing	227	249	241
Advanced Materials and Chemicals	234	212	172
Brand	17	15	13
Total of reportable segments	1,189	1,135	1,018
Other	16	15	11
Consolidated total	\$ 1,205	\$ 1,150	\$ 1,029

Segment Measure of Profit and Loss

Kodak's segment measure of profit and loss is an adjusted earnings before interest, taxes, depreciation and amortization ("Operational EBITDA"). As demonstrated in the table below, Operational EBITDA represents the earnings (loss) from continuing operations before income taxes excluding non-service cost components of pension and other postemployment benefits income; depreciation and amortization expense; restructuring costs and other; stock-based compensation expense; consulting and other costs; idle costs; other operating income, net (unless otherwise indicated); interest expense; loss on early extinguishment of debt and other (charges) income, net.

Kodak's segments are measured using Operational EBITDA both before and after allocation of corporate selling, general and administrative expenses ("SG&A"). The segment earnings measure reported is after allocation of corporate SG&A as this most closely aligns with U.S. GAAP. Research and development activities not directly related to the other segments are reported within the Advanced Materials and Chemicals segment.

2023 Segments

Change in Segments

Effective February 2023 Kodak changed its organizational structure. The Traditional Printing segment and the Digital Printing segment were combined into one segment, named the Print segment. No changes were made to Kodak's other segments.

Segment Operational EBITDA and Consolidated Income (Loss) from Continuing Operations Before Income Taxes

(in millions)	Year Ended December 31,		
	2022	2021	2020
Traditional Printing	\$ 27	\$ 9	\$ 21
Digital Printing	(22)	(5)	(10)
Advanced Materials and Chemicals	(1)	(6)	(23)
Brand	14	13	11
Total of reportable segments	18	11	(1)
Other	3	2	1
Depreciation and amortization	(29)	(31)	(37)
Restructuring costs and other	(13)	(6)	(17)
Stock-based compensation	(5)	(7)	(15)
Consulting and other costs (1)	2	(19)	(9)
Idle costs (2)	(3)	(2)	(3)
Other operating income, net, excluding income from transition services agreement (3)	1	6	7
Interest expense (4)	(40)	(33)	(12)
Pension income excluding service cost component (4)	98	102	98
Loss on early extinguishment of debt (4)	—	—	(2)
Other (charges) income, net (4)	(1)	5	(386)
Consolidated earnings (loss) from continuing operations before income taxes	\$ 31	\$ 28	\$ (376)

(1) Consulting and other costs are professional services and internal costs associated with corporate strategic initiatives, investigations and litigation. Consulting and other costs include \$10 million of income in the year ended December 31, 2022 representing insurance reimbursement of legal costs previously paid by the Company associated with investigations and litigation matters. Kodak received \$5 million of insurance reimbursement in the fourth quarter of 2022 and the remaining \$5 million in January 2023.

(2) Consists of third-party costs such as security, maintenance, and utilities required to maintain land and buildings in certain locations not used in any Kodak operations and the costs, net of any rental income received, of underutilized portions of certain properties.

(3) \$6 million of income from the transition services agreement with the purchaser of the Company's flexographic packaging business in 2019 was recognized in the year ended December 31, 2020. No income was recognized in the years ended December 31, 2022 and 2021. The income was reported in Other operating income, net in the Consolidated Statement of Operations. Other operating income, net is typically excluded from the segment measure. However, the income from the transition services agreement was included in the segment measure.

(4) As reported in the Consolidated Statement of Operations.

In 2022, Kodak decreased employee benefit reserves by \$15 million composed of a reduction in workers' compensation reserves of approximately \$13 million driven by changes in discount rates and a decrease in other employee benefit reserves of approximately \$2 million, driven by both changes in discount rates and favorable experience. The decrease in reserves in 2022 impacted gross profit by approximately \$9 million, R&D by approximately \$1 and SG&A by approximately \$5 million.

Kodak decreased workers' compensation reserves by approximately \$4 million in 2021 driven by changes in discount rates. The decrease in reserves in 2021 impacted gross profit by approximately \$3 million and SG&A by approximately \$1 million.

Kodak increased employee benefit reserves by approximately \$4 million in 2020 reflecting an increase in workers' compensation reserves (\$7 million) partially offset by a decrease in postemployment benefit reserves (\$3 million). The increase in reserves in 2020 impacted gross profit and SG&A each by approximately \$2 million.

Amortization and depreciation expense by segment are not included in the segment measure of profit and loss but are regularly provided to the Chief Operating Decision Maker.

(in millions) Intangible asset amortization expense from continuing operations:	Year Ended December 31,		
	2022	2021	2020
Traditional Printing	\$ —	\$ —	\$ 1
Digital Printing	4	4	3
Brand	1	1	1
Consolidated total	\$ 5	\$ 5	\$ 5

(in millions) Depreciation expense from continuing operations:	Year Ended December 31,		
	2022	2021	2020
Traditional Printing	\$ 11	\$ 14	\$ 19
Digital Printing	6	6	7
Advanced Materials and 3D Printing	6	5	5
Other	1	1	1
Consolidated total	\$ 24	\$ 26	\$ 32

(in millions) Long-lived assets located in: (1)	Year Ended December 31,	
	2022	2021
The United States	\$ 95	\$ 81
Europe, Middle East and Africa	9	14
Asia Pacific	6	4
Canada and Latin America	44	41
Non-U.S. countries total (2)	59	59
Consolidated total	\$ 154	\$ 140

(1) Long-lived assets are comprised of property, plant and equipment, net.

(2) Of the total non-U.S. property, plant and equipment in 2022, \$41 million was located in Brazil. Of the total non-U.S. property, plant and equipment in 2021, \$39 million was located in Brazil.

Major Customers

No single customer represented 10% or more of Kodak's total net revenue in any year presented.

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

Kodak maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in Kodak's reports filed or submitted under the Securities Exchange Act of 1934 (the "Exchange Act") is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including Kodak's Executive Chairman and Chief Executive Officer and Kodak's Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Kodak's management, with participation of Kodak's Executive Chairman and Chief Executive Officer and Kodak's Chief Financial Officer, has evaluated the effectiveness of Kodak's disclosure controls and procedures as of the end of the fiscal year covered by this Annual Report on Form 10-K. Kodak's Executive Chairman and Chief Executive Officer and Kodak's Chief Financial Officer have concluded that, as of the end of the period covered by this Annual Report on Form 10-K, Kodak's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) were effective.

Management's Report on Internal Control Over Financial Reporting

The management of Kodak is responsible for establishing and maintaining adequate internal control over financial reporting. Kodak's internal control over financial reporting is 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 in the United States of America. Kodak's internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Kodak; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles in the United States of America, and that receipts and expenditures of Kodak are being made only in accordance with authorizations of management and directors of Kodak; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of Kodak's assets that could have a material effect on the financial statements.

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment or breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override.

Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk. 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.

Management assessed the effectiveness of Kodak's internal control over financial reporting as of December 31, 2022. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in "Internal Control-Integrated Framework" (2013). Based on management's assessment using the COSO criteria, management has concluded that Kodak's internal control over financial reporting was effective as of December 31, 2022. The effectiveness of Kodak's internal control over financial reporting as of December 31, 2022 has been audited by Ernst & Young LLP, Kodak's independent registered public accounting firm, as stated in their report, refer to Item 8. Financial Statements and Supplementary Data.

Changes in Internal Control over Financial Reporting

There was no change identified in Kodak's internal control over financial reporting that occurred during Kodak's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, Kodak's internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

Not applicable.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by Item 10 regarding directors is incorporated by reference from the information under the caption "Board of Directors and Corporate Governance - Director Nominees" in the Company's Notice of 2023 Annual Meeting and Proxy Statement (the "Proxy Statement"), which will be filed within 120 days after December 31, 2022. The information required by Item 10 regarding audit committee composition and audit committee financial expert disclosure is incorporated by reference from the information under the caption "Board of Directors and Corporate Governance - Committees of the Board - Audit and Finance Committee" in the Proxy Statement. The information required by Item 10 regarding executive officers is contained in Part I of this report under the caption "Information About our Executive Officers". The information required by Item 10 regarding compliance with Section 16(a) of the Securities Exchange Act of 1934 is incorporated by reference, if necessary, from the information under the caption "Security Ownership of Certain Beneficial Owners and Management – Delinquent Section 16(a) Reports" in the Proxy Statement.

We have adopted a Business Conduct Guide that applies to all of our officers and employees, including our principal executive, principal financial and principal accounting officers, or persons performing similar functions, as well as a Directors' Code of Conduct that applies to our directors. Our Business Conduct Guide and Directors' Code of Conduct are posted on our website located at <http://investor.kodak.com/corporate-governance/supporting-documents>. We intend to disclose future amendments to certain provisions of the Business Conduct Guide and waivers of the Business Conduct Guide granted to executive officers, on the website within four business days following the date of the amendment or waiver.

ITEM 11. EXECUTIVE COMPENSATION

The information required by Item 11 is incorporated herein by reference from the information under the following captions in the Proxy Statement: "Executive Compensation", "CEO Pay Ratio", "Pay Versus Performance", "Director Compensation" and "Board of Directors and Corporate Governance – Compensation, Nominating and Governance Committee Interlocks and Insider Participation."

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

The information required by Item 12 is incorporated by reference from the information under the captions "Security Ownership of Certain Beneficial Owners and Management" in the Proxy Statement. "Securities Authorized for Issuance Under Equity Compensation Plans" is shown below.

EQUITY COMPENSATION PLAN INFORMATION

Information as of December 31, 2022, regarding the Company's equity compensation plans is summarized in the following table:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Restricted Stock Units and Restricted Stock Awards	Weighted- Average Exercise Price of Outstanding Options (1)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a) (2)
	(a)	(b)	(c)
Equity compensation plans approved by security holders (3)	8,327,287	\$ 6.97	4,579,397
Equity compensation plans not approved by security holders	—	—	—

(1) Represents the weighted-average exercise price of outstanding stock options. The weighted-average exercise price does not take into account the shares issuable upon vesting of outstanding restricted stock units and restricted stock awards under the Amended and Restated 2013 Omnibus Incentive Plan, as amended (the "Plan"), which do not have an exercise price.

(2) For the purposes of the number of shares available under the Plan, each outstanding stock option counts as a fraction of a share, based on the financial value of the stock option relative to a share.

(3) All shares covered by the Plan are now being treated as approved by shareholders based on the approval by shareholders of the amendment and restatement of the Plan on May 20, 2020, and the subsequent amendment of the Plan on May 19, 2021. The shares originally covered by the 2013 Omnibus Incentive Plan (the "Original Plan") were previously reported as not approved by shareholders because the Original Plan had been approved by the Bankruptcy Court pursuant to the Plan of Reorganization.

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

The information required by Item 13 is incorporated by reference from the information under the captions "Certain Relationships and Related Transactions" and "Board of Directors and Corporate Governance – Director and Nominee Independence" in the Proxy Statement.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by Item 14 is incorporated by reference from the information under the caption "Principal Accounting Fees and Services" in the Proxy Statement.

PART IV

ITEM 15. FINANCIAL STATEMENT SCHEDULES, EXHIBITS

1. Valuation and qualifying accounts

Schedule II

Eastman Kodak Company
Valuation and Qualifying Accounts

(in millions)	Beginning Balance	Additions	Net Deductions and Other	Ending Balance
Year ended December 31, 2022				
Reserve for doubtful accounts	\$ 7	2	2	\$ 7
Deferred tax valuation allowance	\$ 934	18	126	\$ 826
Year ended December 31, 2021				
Reserve for doubtful accounts	\$ 10	—	3	\$ 7
Deferred tax valuation allowance	\$ 1,112	33	211	\$ 934
Year ended December 31, 2020				
Reserve for doubtful accounts	\$ 8	7	5	\$ 10
Deferred tax valuation allowance	\$ 821	344	53	\$ 1,112

All other schedules have been omitted because they are not applicable, or the information required is shown in the financial statements or notes thereto.

Eastman Kodak Company
Index to Exhibits

**Exhibit
Number**

- (3.1) [Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company \(Incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-8 as filed on September 3, 2013\).](#)
- (3.2) [Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company. \(Incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K as filed November 16, 2016\).](#)
- (3.3) [Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company \(Incorporated by reference to Exhibit \(3.1\) of the Company's Current Report on Form 8-K as filed September 12, 2019\).](#)
- (3.4) [Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company \(Incorporated by reference to Exhibit \(3.2\) of the Company's Current Report on Form 8-K as filed September 12, 2019\).](#)
- (3.5) [Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company \(Incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K as filed December 29, 2020\).](#)
- (3.6) [Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company \(Incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- (3.7) [Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company \(Incorporated by reference to Exhibit 3.2 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- (3.8) [Fourth Amended and Restated By-Laws of Eastman Kodak Company \(Incorporated by reference to Exhibit \(3.5\) of the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2020 as filed on May 12, 2020\).](#)
- (4.1) [Registration Rights Agreement between Eastman Kodak Company and certain stockholders listed on Schedule 1 thereto, dated September 3, 2013. \(Incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form 8-A as filed on September 3, 2013\).](#)
- (4.2) [Registration Rights Agreement by and among Eastman Kodak Company, Southeastern Asset Management, Inc., Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust, dated November 15, 2016. \(Incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K as filed November 16, 2016\).](#)
- (4.3) [Shareholder Agreement, dated as of April 17, 2017, by and among Eastman Kodak Company, Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, Deseret Mutual Pension Trust and Southeastern Asset Management, Inc. \(Incorporated by reference to Exhibit 4.6 of the Company's Amendment No. 2 to Registration Statement on Form S-3 as filed on May 5, 2017\).](#)
- (4.4) [Amendment No. 1 to Shareholder Agreement, dated as of May 20, 2019 by and among Eastman Kodak Company, Southeastern Asset Management, Inc., Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust \(Incorporated by reference to Exhibit \(10.2\) of the Company's Current Report on Form 8-K as filed May 21, 2019\).](#)
- (4.5) [Registration Rights Agreement, dated as of May 24, 2019, by and among Eastman Kodak Company, Longleaf Partners SmallCap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust \(Incorporated by reference to Exhibit \(4.3\) of the Company's Current Report on Form 8-K as filed May 24, 2019\).](#)
- (4.6) [Registration Rights Agreement, dated as of February 26, 2021, by and between Eastman Kodak Company and GO EK Ventures IV, LLC \(Incorporated by reference to Exhibit 10.3 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)

- (4.7) [Registration Rights Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, Kennedy Lewis Capital Partners Master Fund LP and Kennedy Lewis Capital Partners Master Fund II LP. \(Incorporated by reference to Exhibit 10.11 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- (4.8) [Board Rights Agreement, dated as of February 26, 2021, by and between Eastman Kodak Company and Kennedy Lewis Investment Management LLC \(Incorporated by reference to Exhibit 10.7 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- (4.9) [Convertible Promissory Note, dated as of February 26, 2021, from Eastman Kodak Company to Kennedy Lewis Capital Partners Master Fund LP. \(Incorporated by reference to Exhibit 10.8 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- (4.10) [Convertible Promissory Note, dated as of February 26, 2021, from Eastman Kodak Company to Kennedy Lewis Capital Partners Master Fund II LP. \(Incorporated by reference to Exhibit 10.9 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- (4.11) [Description of Securities \(Incorporated by reference to Exhibit 4.11 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 as filed on March 16, 2021\).](#)
- *(10.1) [Eastman Kodak Company 2013 Omnibus Incentive Plan \(As Amended and Restated effective May 20, 2020 \(Incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2020 as filed August 11, 2020\).](#)
- *(10.2) [First Amendment to the Eastman Kodak Company 2013 Omnibus Incentive Plan, as amended and restated \(Incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2021 as filed on August 10, 2021\).](#)
- *(10.3) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Executive Restricted Stock Unit Award Agreement. \(Incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2013 as filed on November 12, 2013\).](#)
- *(10.4) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Nonqualified Stock Option Agreement. \(Incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2015 as filed on May 7, 2015\).](#)
- *(10.5) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Executive Restricted Stock Unit and Nonqualified Stock Option Award Agreement \(with Modified Accelerated Vesting\). \(Incorporated by reference to Exhibit 10.5 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 as filed on March 7, 2017\).](#)
- *(10.6) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Executive Restricted Stock Unit and Nonqualified Stock Option Award Agreement \(with Continued Vesting\). \(Incorporated by reference to Exhibit 10.6 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 as filed on March 7, 2017\).](#)
- *(10.7) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Executive Restricted Stock Unit and Nonqualified Stock Option Award Agreement \(with Forfeiture upon Termination\). \(Incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2017 as filed on August 9, 2017\).](#)
- *(10.8) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Director Restricted Stock Unit Award Agreement. \(Incorporated by reference to Exhibit 10.3 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013 as filed on March 19, 2014\).](#)
- *(10.9) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Director Restricted Stock Unit Award Agreement \(One Year Vesting\). \(Incorporated by reference to Exhibit 10.3 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2017 as filed on August 9, 2017\).](#)

- *(10.10) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Quarterly Director Restricted Stock Unit Award Agreement \(Immediate Vesting\). \(Incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2019 as filed on November 7, 2019\).](#)
- *(10.11) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Executive Nonqualified Stock Option Award Agreement \(multiple tranches\). \(Incorporated by reference to Exhibit \(10.2\) of the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2020 as filed on November 10, 2020\).](#)
- *(10.12) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Director Nonqualified Stock Option Award Agreement \(multiple tranches\). \(Incorporated by reference to Exhibit \(10.3\) of the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2020 as filed on November 10, 2020\).](#)
- *(10.13) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Executive Restricted Stock Unit Award Agreement \(with Immediate Vesting\) \(Incorporated by reference to Exhibit 10.12 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 as filed on March 16, 2021\).](#)
- *(10.14) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Executive Restricted Stock Unit Award Agreement \(with Modified Accelerated Vesting\) \(Incorporated by reference to Exhibit 10.13 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 as filed on March 16, 2021\).](#)
- *(10.15) [Eastman Kodak Company 2013 Omnibus Incentive Plan Form of Director Restricted Share Award Agreement \(Incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2021 as filed on August 10, 2021\).](#)
- *(10.16) [Eastman Kodak Company Deferred Compensation Plan for Directors dated December 26, 2013. \(Incorporated by reference to Exhibit 10.23 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013 as filed on March 19, 2014\).](#)
- *(10.17) [Eastman Kodak Company Officer Severance Policy, effective as of November 10, 2015 and revised as of February 16, 2023. \(filed herewith\).](#)
- *(10.18) [Eastman Kodak Company Executive Compensation for Excellence and Leadership \(as amended and restated January 1, 2014\). \(Incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2014 as filed on May 6, 2014\).](#)
- *(10.19) [Executive Chairman and CEO Agreement between Eastman Kodak Company and James V. Continenza, dated February 26, 2021 \(Incorporated by reference to Exhibit 10.17 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 as filed on March 16, 2021\).](#)
- *(10.20) [James V. Continenza Consolidated Award Agreements, Tranches 1-4, dated February 20, 2019 \(Incorporated by reference to Exhibit \(10.24\) of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2018 as filed on April 1, 2019\).](#)
- *(10.21) [Amendment to Executive Chairman and CEO Agreement between Eastman Kodak Company and James V. Continenza, dated November 30, 2022 \(filed herewith\).](#)
- *(10.22) [Employment Agreement between Eastman Kodak Company and David E. Bullwinkle, dated June 20, 2016. \(Incorporated by reference to Exhibit 10.3 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2016 as filed on August 9, 2016\).](#)
- *(10.23) [Description of David E. Bullwinkle Compensation Increase. \(Incorporated by reference to the description in Item 5.02 in the Company's Current Report on Form 8-K as filed on November 30, 2018\).](#)
- *(10.24) [Description of John O'Grady Compensation Increase. \(Incorporated by reference to the description in Item 5.02 in the Company's Current Report on Form 8-K as filed on April 9, 2018\).](#)

- [*\(10.25\) Letter Agreement Regarding Special Severance Plan dated May 31, 2018 between Eastman Kodak Company and Roger W. Byrd, Incorporated by reference to Exhibit \(10.31\) of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2019 as filed on March 17, 2020\).](#)
- [\(10.26\) Amendment No. 4 to Amended and Restated Credit Agreement \(including attached Amended and Restated Credit Agreement\), dated as of August 26, 2021 by and among Eastman Kodak Company, the Lenders named therein, the Guarantors named therein and Bank of America, N.A., as agent. \(Incorporated by reference to Exhibit 10.4 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- [\(10.27\) Amendment No. 5 to Amended and Restated Credit Agreement \(including attached Amended and Restated Credit Agreement\), dated as of March 14, 2023 by and among Eastman Kodak Company, certain Lenders named therein, the Guarantors named therein and Bank of America, N.A., as agent \(filed herewith\).](#)
- [\(10.28\) Amended and Restated Security Agreement, dated May 26, 2016, from the Grantors referred to therein, as Grantors, to Bank of America, N.A., as Agent. \(Incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2016 as filed on August 9, 2016\).](#)
- [\(10.29\) Letter of Credit Facility Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, the Lenders named therein, the Guarantors named therein, Bank of America, N.A., as administrative agent and collateral agent and Bank of America, N.A., as issuing bank. \(Incorporated by reference to Exhibit 10.5 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- [\(10.30\) Amendment No. 1 to Letter of Credit Facility Agreement, dated as of March 14, 2023, by and among Eastman Kodak Company, the Lenders named therein, the Guarantors named therein, Bank of America, N.A., as administrative agent and collateral agent, and Bank of America, N.A., as issuing bank \(filed herewith\).](#)
- [\(10.31\) Security Agreement, dated February 26, 2021, from the Grantors referred to therein, as Grantors, to Bank of America, N.A., as Agent \(Incorporated by reference to Exhibit 10.26 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 as filed on March 16, 2021\).](#)
- [\(10.32\) Credit Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, the Lenders named therein and Alter Domus \(US\) LLC, as Administrative Agent. \(Incorporated by reference to Exhibit 10.6 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- [\(10.33\) Guarantee and Collateral Agreement, dated February 26, 2021, made by the Grantors referred to therein, as Grantors, to Alter Domus \(US\) LLC, as Administrative Agent \(Incorporated by reference to Exhibit 10.28 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 as filed on March 16, 2021\).](#)
- [\(10.34\) Intercreditor Agreement, dated as of February 26, 2021, among Bank of America, N.A., as Representative with respect to the ABL Credit Agreement, Bank of America, N.A., as Representative with respect to the LC Credit Agreement, and Alter Domus \(US\) LLC, as Representative with respect to the Term Loan Agreement, Eastman Kodak Company, and each of the other Grantors party thereto \(Incorporated by reference to Exhibit 10.29 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 as filed on March 16, 2021\).](#)
- [\(10.35\) Intercreditor Agreement, dated as of February 26, 2021, among Bank of America, N.A., as Representative with respect to the ABL Credit Agreement, Bank of America, N.A., as Representative with respect to the LC Credit Agreement, Eastman Kodak Company, and each of the other Grantors party thereto \(Incorporated by reference to Exhibit 10.30 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 as filed on March 16, 2021\).](#)
- [\(10.36\) Series A Preferred Stock Purchase Agreement, dated as of November 7, 2016, by and among Eastman Kodak Company, Southeastern Asset Management, Inc., Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust. \(Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K as filed on November 7, 2016\).](#)

- (10.37) [Amendment Number One to Series A Preferred Stock Purchase Agreement, dated as of December 24, 2020, by and among Eastman Kodak Company, Southeastern Asset Management, Inc., Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust \(Incorporated by reference to Exhibit 10.32 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 as filed on March 16, 2021\).](#)
- (10.38) [Series A Preferred Stock Repurchase and Exchange Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, Southeastern Asset Management, Inc., Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust. \(Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- (10.39) [Series C Preferred Stock Purchase Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company and GO EK Ventures IV, LLC. \(Incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- (10.40) [Securities Purchase Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, Kennedy Lewis Capital Partners Master Fund LP and Kennedy Lewis Capital Partners Master Fund II LP. \(Incorporated by reference to Exhibit 10.8 of the Company's Current Report on Form 8-K as filed March 1, 2021\).](#)
- (10.41) [Amended and Restated Settlement Agreement \(Eastman Business Park\) between Eastman Kodak Company, the New York State Department of Environmental Conservation, and the New York State Urban Development Corporation d/b/a Empire State Development, dated August 6, 2013. \(Incorporated by reference to Exhibit 10.10 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2013 as filed on November 12, 2013\).](#)
- (21) [Subsidiaries of Eastman Kodak Company, filed herewith.](#)
- (23.1) [Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm, filed herewith.](#)
- (31.1) [Certification signed by James V. Continenza, filed herewith.](#)
- (31.2) [Certification signed by David E. Bullwinkle, filed herewith.](#)
- (32.1) [Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, signed by James V. Continenza, filed herewith.](#)
- (32.2) [Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 signed by David E. Bullwinkle, filed herewith.](#)

(101.CAL) Inline XBRL Taxonomy Extension Calculation Linkbase.

(101.INS) Inline XBRL Instance Document.

(101.LAB) Inline XBRL Taxonomy Extension Label Linkbase.

(101.PRE) Inline XBRL Taxonomy Extension Presentation Linkbase.

(101.SCH) Inline XBRL Taxonomy Extension Scheme Linkbase.

(101.DEF) Inline XBRL Taxonomy Extension Definition Linkbase.

104 Cover Page Interactive Data File (formatted in Inline XBRL and contained in Exhibit 101).

* Management contract or compensatory plan or arrangement.

Eastman Kodak Company was granted confidential treatment for certain information contained in this exhibit. Such information was filed separately with the Securities and Exchange Commission pursuant to an application for confidential treatment under 17 C.F.R. §§ 200.80(b)(4) and 240.24b-2

ITEM 16. FORM 10-K SUMMARY

None.

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.

EASTMAN KODAK COMPANY
(Registrant)

By: /s/ James V. Continenza
James V. Continenza
Executive Chairman and Chief Executive Officer
March 16, 2023

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

Signature	Title
By: <u>/s/ James V. Continenza</u> James V. Continenza	Executive Chairman and Chief Executive Officer (Principal Executive Officer)
By: <u>/s/ David E. Bullwinkle</u> David E. Bullwinkle	Chief Financial Officer (Principal Financial Officer)
By: <u>/s/ Richard T. Michaels</u> Richard T. Michaels	Chief Accounting Officer and Corporate Controller (Principal Accounting Officer)
By: <u>/s/ B. Thomas Golisano</u> B. Thomas Golisano	Director
By: <u>/s/ Philippe D. Katz</u> Philippe D. Katz	Director
By: <u>/s/ Kathleen B. Lynch</u> Kathleen B. Lynch	Director
By: <u>/s/ Jason New</u> Jason New	Director
By: <u>/s/ Darren L. Richman</u> Darren L. Richman	Director
By: <u>/s/ Michael E. Sileck, Jr.</u> Michael E. Sileck, Jr.	Director

Date: March 16, 2023

EASTMAN KODAK COMPANY

Officer Severance Policy

The Compensation, Nominating and Governance Committee (the "Committee") of the Board of Directors of Eastman Kodak Company ("Kodak") has adopted this Officer Severance Policy (this "Policy"), effective as of November 10, 2015 (the "Effective Date") and revised as of February 16, 2023, to provide for the payment and provision of the specified compensation to select officers of Kodak and its subsidiaries and affiliates (collectively, the "Company") and certain other employees in the event of a qualifying termination of employment.

1. Eligibility

(a) Eligible Employees. The employees eligible for the compensation in the event of a qualifying termination of employment under this Policy (each a "Participant," and collectively, the "Participants") are: (i) the Corporate Officers of the Company, **other than** Kodak's Chief Executive Officer and any Corporate Officer employed with the Company under an employment agreement that has an indefinite term; and (ii) any employee of the Company who is not a Corporate Officer but who currently has an employment agreement providing enhanced severance that became effective upon the occurrence of the effective date of the Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code filed by Kodak and expires in September 2016 (an "Emergence Contract"). "Corporate Officer" means an employee who has been elected as an officer of Kodak by its Board of Directors of Kodak and remains an officer of Kodak on the date of the employee's termination of employment. Schedule A includes employees who have "grandfathered" participation as approved by the Committee.

(b) Excluded Employees. Notwithstanding Paragraph 1(a), (i) any employee of the Company (including any Corporate Officer) who, at the time of termination of employment, is covered by an agreement with or other arrangement of the Company that provides for severance compensation in the event of a termination of employment (including, but not limited to, an Emergence Contract), and (ii) any Corporate Officer who is covered by a local severance arrangement outside of the United States that provides for severance benefits greater than those under this Policy (as determined by the Committee, in its sole discretion), shall not be eligible for compensation under this Policy. Instead, the employee or Corporate Officer described in clause (i) or (ii) of this Paragraph 1(b) shall be entitled to the severance compensation, if any, payable to the employee or Corporate Officer under such agreement (including an Emergence Contract), severance arrangement or local severance arrangement described in such clauses applicable to the employee or Corporate Officer, subject to the terms and conditions thereof.

2. Qualifying Terminations

(a) Eligible Qualifying Terminations. In the event of the termination by the Company of a Participant's employment with the Company without Cause, or the resignation by a Participant of his or her employment with the Company for Good Reason, if the Participant satisfies the requirement set forth in Paragraph 2(b), the Participant shall be eligible to receive the compensation specified by Paragraph 3, subject to the terms and conditions of this Policy. A Participant shall not be eligible for compensation or benefits under this Policy in the event of the termination of the Participant's employment with the Company for Cause or by reason of the Participant's death or Disability.

(b) Waiver and Release. To be eligible for the severance compensation and benefits specified by Paragraph 3, the Participant must sign and not revoke a waiver and release of all claims arising out of (A) his or her employment with the Company, and (B) his or her termination or resignation of employment from the Company, on a form reasonably satisfactory to the Company and provided to the Participant, before the deadline specified by the release.

(c) Non-Disparagement. By accepting any severance compensation or benefits under this Policy, a Participant agrees and covenants not to disparage the Company, its directors, its officers or its employees; provided, however, this covenant shall not prohibit a Participant from reporting possible violations of federal laws or regulations to any governmental agency or entity, including, but not limited to, the Securities and Exchange Commission.

(d) Cause. For purposes of this Policy, "Cause" with respect to a Participant means any of the following: (i) the Participant's continued failure, for a period of at least 30 calendar days following a written warning, to perform his or her duties in a manner deemed satisfactory by the Participant's supervisor, in the exercise of his or her sole discretion; (ii) the Participant's failure to follow a lawful written directive of Kodak's Chief Executive Officer, the Participant's supervisor or Kodak's Board of Directors; (iii) the Participant's willful violation of any material rule, regulation, or policy that may be established from time to time for the conduct of the Company's business; (iv) the Participant's unlawful possession, use or sale of narcotics or other controlled substances, or performing job duties while illegally used controlled substances are present in the Participant's system; (v) any act or omission or commission by the Participant in the scope of the Participant's employment (A) which results in the assessment of a civil or criminal penalty against the Participant or the Company, or (B) which in the reasonable judgment of the Participant's supervisor could result in a material violation of any foreign or U.S. federal, state or local law or regulation having the force of law; (vi) the Participant's conviction of or plea of guilty or no contest to any crime involving moral turpitude; (vii) any misrepresentation of a material fact to, or concealment of a material fact from, the Participant's supervisor or any other person in the Company to whom the Participant has a reporting relationship in any capacity; or (viii) the Participant's breach of the Company's Business Conduct Guide or the Eastman Kodak Company Employee's Agreement.

(e) Disability. For purposes of this Policy, "Disability," means a disability under the terms of Kodak's Long-Term Disability Plan.

(f) Good Reason. For purposes of this Policy, "Good Reason" with respect to a Participant means any of the following: (i) a material diminution in the Participant's total target cash compensation, which is comprised of the Participant's base salary and target short-term incentive opportunity (expressed as a percentage of base salary); (ii) a material diminution in Participant's authority or responsibilities; (iii) the transfer of the Participant's primary work site or home office as applicable (as determined by the Committee), to a new primary work site that increases the Participant's one-way commute to work by more than 75 miles; or (iv) failure of an acquirer or successor entity to the Company to offer the Participant employment with severance protection comparable to that provided by this Policy as in effect at the time of the acquisition or transaction, if the Participant agrees not to seek and does not commence subsequent employment with the acquirer or successor entity. In its discretion, the Committee makes the final determination of whether the participant has Good Reason for resignation.

3. Severance Compensation

(a) Separation Pay. Except as otherwise provided by Paragraph 3(b), the amount of severance payable to a Participant in the event that he or she has a Qualifying Termination and satisfies the condition set forth in Paragraph 2(b) (the "Separation Pay"), shall be an amount equal to the Participant's annual base salary at the rate in effect as of the date of the Qualifying Termination.

(b) "Grandfathered" Separation Pay Amounts. Notwithstanding Paragraph 3(a), the Separation Pay for the Participants set forth on Schedule B hereto, who as of the Effective Date of this Policy are a party to an Emergence Contract, shall be for the amount of severance specified for such Participant on Schedule B.

(c) Payment of Separation Pay; Tax Withholding. The Separation Pay payable to a Participant in the event of the Participant's Qualifying Termination shall be paid over the 12-month period following the Qualifying Termination in accordance with the Company's usual payroll practices, less the amount of applicable federal, state and local income and employment tax withholdings. The payment of Separation Pay shall commence with the first full payroll period following the expiration of the period during which the Participant may revoke the waiver and release required by Paragraph 2(b), and the first installment of Separation Pay shall include any installments that would otherwise have been paid following the date of the Participant's Qualifying Termination and before the payment date of such first installment of Separation Pay.

(d) Equity Awards. In the event of a Participant's Qualifying Termination, the effect of such termination on the Participant's outstanding stock options, restricted stock, restricted stock units, and other equity awards shall be determined under and governed exclusively by the terms of the equity plan, award agreement, award notice and other documents applicable thereto.

4. Administration

This Policy will be administered by the Committee. The Committee shall have the power, authority and complete and exclusive discretion: (i) to construe, interpret, and administer the terms of this Policy; (ii) to remedy any possible ambiguities in the terms of this Policy, and to determine conclusively, for all parties, all questions arising out of the interpretation or administration of this Policy; (iii) to determine conclusively the right of any person to Separation Pay and the amount of such Separation Pay, including, but not limited to, the determination of all questions relating to eligibility for coverage and Separation Pay; and (iv) to delegate some aspects of plan administration to management. Any decision made or other action taken by the Committee with respect to this Policy, and any interpretation by the Committee of any term or condition of this Policy, will be conclusive and binding on all persons and be given the maximum possible deference allowed by law.

5. Amendment, Modification or Termination

The Committee may amend, modify or terminate this Policy (including Schedules A and B) at any time, for any reason or no reason. No person has any vested rights under this Policy (or Schedules A and B).

6. Non-Duplication of Benefits

If the Company is required to pay severance or termination benefits to a Participant under any other plan, agreement or arrangement, or by law, the Separation Pay payable to the Participant under this Policy will be reduced by the amount of the required severance or termination benefits required to be paid to the Participant under such other plan, agreement or arrangement, or by law. This provision is intended to prevent duplication of benefits, and is not intended to permit an alteration in the time or form of the Separation Pay payable under this Policy.

7. Section 409A

The Separation Pay is intended to qualify for an exemption from the requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations promulgated and other official guidance issued thereunder (collectively, "Section 409A"), and this Policy shall be administered and interpreted consistent with such intent. Notwithstanding the foregoing, the Company makes no representations that the Separation Pay is exempt from Section 409A, and in no event will the Company be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by a Participant on account of non-compliance with Section 409A. Each payment under this Policy shall be deemed to be a separate payment for purposes of Section 409A. References to "termination of employment" and similar terms used in this Policy mean a "separation from service" within the meaning of Section 409A. In the event that an Employee is a "specified employee" (within the meaning of Section 409A and as determined by the Company) at the time of separation from service, any compensation payable hereunder by reason of such separation of service that would otherwise be paid during the six-month period immediately following such separation from service shall instead be paid on the first day of the seventh month following the separation from service if and to the extent required to comply with Section 409A.

8. Miscellaneous

(a) Employee's Agreement. A Participant's Eastman Kodak Company Employee's Agreement will remain in full force and effect following the Participant's termination of employment with the Company, including, without limitation, the provisions regarding nondisclosure of confidential information, non-competition with the Company, and non-solicitation of Company employees, customers and suppliers. Before a Participant accepts employment with any other person or entity while his or her Employee's Agreement is in effect, the Participant must provide the prospective employer with written notice of the provisions of the Employee's Agreement and will deliver a copy of the notice to the Company.

(b) No Guarantee of Employment. Nothing in this Policy will be construed as granting any Participant a right to continued employment or other service with the Company, or to interfere with the right of the Company to discipline or discharge the Participant at any time.

(c) Benefits Bearing. In no event shall any of the Separation Pay provided under this Policy be "benefits bearing."

(d) Clawback. In the event that a Participant breaches any of the terms of the Eastman Kodak Company Employee's Agreement, in addition to and not in lieu of any other remedies that the Company may pursue against the Participant, no further payments of Separation Pay will be made to the Participant pursuant to this Policy and the Participant shall immediately repay to the Company all moneys previously paid to the Participant pursuant to this Policy.

(e) No Waiver. The failure by the Company or its agent to enforce any provision of this Policy at any time or from time to time, and with respect to any person or persons, shall not be construed to be a waiver of such provision, nor in any way limit the Company's or its agent's ability to enforce such provision in any situation.

(f) Severability. If part or all of any of the provisions of this Policy shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular situation, such circumstances shall not have the effect of rendering any other parts of the provision at issue or other Policy provisions invalid, inoperative or unenforceable to any extent whatsoever.

(g) Governing Law. This Policy shall be construed in accordance with the laws of New York State without regard to the conflicts of law principles thereof.

(h) Headings. The headings used in this Policy are for convenience of reference only and will not control or affect the meaning or construction of any of its provisions.

* * * * *

November 30, 2022

James V. Continenza

Re: Executive Chairman and CEO Agreement

Dear Mr. Continenza:

As of the date hereof, the Board of Directors of Eastman Kodak Company (the "*Company*"), upon recommendation of the Compensation, Nominating and Governance Committee (the "*Committee*") of the Board of Directors of the Company (the "*Board*") has approved an amendment (the "*Amendment*") to the employment agreement between you and the Company effective as of February 26, 2021 (the "*Employment Agreement*") as described below. All other terms of the Employment Agreement remain in full force and effect. Terms not defined herein shall have the meanings given to them in the Employment Agreement.

Section 4(b) of the Employment Agreement is hereby amended and restated as follows:

Annual Incentive. During 2022 and each full year of the Scheduled Term thereafter, you will be entitled to an annual incentive award determined in accordance with the terms set forth in Schedule 1 (your "*Annual Incentive*"). You agree that no Annual Incentive will be payable with respect to 2021. Each year, you shall also be delegated an amount equal to 100% of your Base Salary that you may award to Company employees at your discretion (the "*Employee Incentive*"), without any input or approval from the Board or the Committee except as required by the rules and regulations of the New York Stock Exchange, the Securities and Exchange Commission, and other applicable law. Neither the Board nor the Committee will have any right to approve, deny, revoke or reduce any Employee Incentive award you make to any employee except as required by the rules and regulations of the New York Stock Exchange, the Securities and Exchange Commission, and other applicable law. Any portion of the Employee Incentive not paid in any year will be rolled over and added to the Employee Incentive for the following year through the end of the Scheduled Term.

The portion of Schedule 1 to the Employment Agreement as it relates to your Annual Incentive is hereby amended and restated as follows. The remainder of Schedule 1 remains in full force and effect.

<i>Annual Cash Performance Incentive</i>	Your cash Annual Incentive for 2022 and each year thereafter will be up to 100% of your Base Salary as determined by the Committee in its discretion based on an evaluation of your and the Company's performance. Annual Incentive will be earned on a pro rata basis and paid in cash by March 15 th of the year following the Scheduled Term year for which the Annual Incentive was earned.
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Please indicate your acceptance of the amendment to your Agreement by signing the acknowledgement below and returning this letter to me.

Thank you.

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle
Name: David E. Bullwinkle
Title: Chief Financial Officer and Senior Vice President

**EXECUTIVE CHAIRMAN AND
CHIEF EXECUTIVE OFFICER**

/s/ James V. Continenza
James V. Continenza

AMENDMENT NO. 5 TO AMENDED AND RESTATED CREDIT AGREEMENT

AMENDMENT NO. 5 TO AMENDED AND RESTATED CREDIT AGREEMENT, dated as of March 14, 2023 (this "Amendment No. 5"), by and among Bank of America, N.A., a national banking association, in its capacity as administrative agent and collateral agent (in such capacity, together with its successors and assigns, "Agent") pursuant to the Credit Agreement (as defined below), each of the parties to the Credit Agreement as lenders (individually, each a "Lender" and collectively, "Lenders"), Eastman Kodak Company, a New Jersey corporation (the "Borrower" or "Company"), the subsidiaries of Borrower party thereto as Guarantors (individually, each a "Guarantor" and collectively, "Guarantors").

W I T N E S S E T H :

WHEREAS, Agent, Lenders and certain other parties have entered into a senior secured revolving credit facility pursuant to which Agent and Lenders have made, and may make, loans and advances and provide other financial accommodations to Borrower as set forth in the Amended and Restated Credit Agreement, dated as of May 26, 2016, by and among Borrower, Guarantors, Lenders and Agent (as amended by Amendment No. 1, dated as of November 7, 2016, Amendment No. 2, dated as of May 24, 2019, Amendment No. 3, dated as of March 27, 2020, and Amendment No. 4 to Amended and Restated Credit Agreement, dated as of February 26, 2021, and as in effect prior to the date hereof, the "Existing Credit Agreement") and the other Loan Documents (as defined in the Existing Credit Agreement);

WHEREAS, Borrower and Guarantors have requested that Agent and Lenders agree to certain amendments to the Existing Credit Agreement, and Agent and Lenders are willing to agree to such amendments, subject to the terms and conditions contained herein; and

WHEREAS, by this Amendment No. 5, Agent, Lenders and the Loan Parties intend to evidence such amendments;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1. Additional Definitions. The Credit Agreement is hereby amended to include, in addition and not in limitation, the following definitions:

(a) "Amendment No. 5" means Amendment No. 5 to Amended and Restated Credit Agreement, dated as of March 14, 2023, by and among Agent, Lenders and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(b) "Amendment No. 5 Effective Date" means the first date on which the conditions precedent set forth in Section 7 of Amendment No. 5 are satisfied as set forth in the notice from Agent to Borrower provided for in Section 7 of Amendment No. 5.

(c) "Amendment No. 5 Transactions" means, collectively, (a) the execution, delivery and performance of, Amendment No. 5 and the other related Loan Documents, (b) the execution, delivery and performance of, Amendment No. 1 to Letter of Credit Facility Agreement, dated of even date herewith, by and among the Company, as borrower, the lenders from time to time parties thereto, and Supplemental Letter of Credit Facility Agent and the related documents, and (c) all other related transactions including the payment of fees and expenses in connection with all of the foregoing.

1.2. Interpretation. For purposes of this Amendment No. 5, all terms used herein which are not otherwise defined herein, including but not limited to, those terms used in the recitals hereto, shall have the respective meanings assigned thereto in the Credit Agreement (as defined below).

2. Amendments to Existing Credit Agreement. As of the Amendment No. 5 Effective Date, the Existing Credit Agreement is hereby amended and restated in its entirety such that on the Amendment No. 5 Effective Date, the terms and conditions set forth in Exhibit A hereto shall replace and supersede in their entirety the terms and conditions set forth in the Existing Credit Agreement. All schedules and exhibits to the Existing Credit Agreement, as in effect immediately prior to the date of this Amendment No. 5, shall constitute schedules and exhibits to the Credit Agreement, except, that, those schedules and exhibits which are attached to the Credit Agreement as set forth in Exhibit A to this Amendment No. 5 shall constitute those respective schedules and exhibits after the date of this Amendment No. 5. Each Lender signatory hereto and Borrower consent to the amendment of the Existing Credit Agreement as provided for herein pursuant to the terms set forth in Exhibit A. From and after the Amendment No. 5 Effective Date, each reference to the "Agreement", "Credit Agreement", "thereunder", "thereof", "therein" or words of like import originally applicable to the Existing Credit Agreement contained in any Loan Document shall mean and be a reference to the Credit Agreement as set forth in Exhibit A to this Amendment No. 5. (as such credit agreement may be amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement").

3. Representations and Warranties. Each Loan Party represents and warrants with and to Secured Parties as follows, which representations and warranties shall survive the execution and delivery hereof:

3.1. As of the Amendment No. 5 Effective Date, no Default or Event of Default exists or has occurred and is continuing.

3.2. This Amendment No. 5 has been duly authorized, executed and delivered by all necessary corporate or limited liability company action, as applicable, on the part of each Loan Party and, upon the notification by Agent to Borrower and Lenders of the Amendment No. 5 Effective Date, is in full force and effect as of the date hereof, as the case may be, and the agreements and obligations of each Loan Party, as the case may be, contained herein constitute legal, valid and binding obligations of each Loan Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

3.3. All of the representations and warranties of each Loan Party set forth herein and in each of the other Loan Documents are true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) on and as of the Amendment No. 5 Effective Date before and after giving effect to the effectiveness of this Amendment No. 5 and the transactions contemplated hereby with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date in which case such representations and warranties shall be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date.

4. Amendment Fees. Borrower shall pay to Agent, for the account of the Lenders which execute this Amendment No. 5, the fees provided for in the Amendment No. 5 Fee Letter, dated of even date herewith, between Agent and Borrower (the "Amendment No. 5 Fee Letter"), which fees shall be fully earned and payable on the Amendment No. 5 Effective Date and shall be nonrefundable in all circumstances.

5. Reaffirmation. Each Loan Party acknowledges, confirms and agrees that (a) it is indebted to Agent and Lenders under the Existing Credit Agreement, including principal and all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally owing by Loan Parties, without offset, defense or counterclaim of any kind, nature or description whatsoever, (b) Agent has had and shall on and after the date hereof continue to have, for itself and the benefit of the other Secured Parties, a security interest in and lien upon the Collateral heretofore granted to Agent (or its predecessors in whatever capacity) pursuant to the Loan Documents to secure the Obligations, (c) the liens and security interests of Agent in the Collateral shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such liens and security interests to Agent, and (d) the Existing Credit Agreement and each of the other Loan Documents remain in full force and effect and are hereby ratified and confirmed.

6. No Novation. The terms and conditions of the Existing Credit Agreement are amended as set forth in, and restated in their entirety and superseded by, Exhibit A to this Amendment No. 5. Nothing in this Amendment No. 5 (including Exhibit A hereto) shall be deemed to be a novation of any of the Obligations as defined in the Existing Credit Agreement or in any way impair or otherwise affect the rights or obligations of the parties thereunder (including with respect to Revolving Loans and representations and warranties made thereunder) except as such rights or obligations are amended or modified hereby. Notwithstanding any provision of this Amendment No. 5 or any other Loan Document or instrument executed in connection herewith, the execution and delivery of this Amendment No. 5 and the incurrence of Obligations hereunder shall be in substitution for, but not in payment of, the Obligations owed by the Loan Parties under the Existing Credit Agreement. The Existing Credit Agreement as amended and restated pursuant to the terms set forth in Exhibit A shall be deemed to be a continuing agreement among the parties, and all documents, instruments and agreements delivered pursuant to or in connection with the Existing Credit Agreement not amended and restated in connection with the entry of the parties into this Amendment No. 5 shall remain in full force and effect, each in accordance with its terms, as of the date of delivery or such other date as contemplated by such document, instrument or agreement to the same extent as if the modifications to the Existing Credit Agreement contained herein were set forth in an amendment to the Existing Credit Agreement in a customary form, unless such document, instrument or agreement has otherwise been terminated or has expired in accordance with or pursuant to the terms of this Amendment No. 5, the Existing Credit Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto. The amendments provided for herein, including in Exhibit A hereto, shall not, in any manner, be construed to impair, limit, cancel or extinguish, or constitute a novation in respect of, the Indebtedness and other obligations and liabilities of any Loan Party evidenced by or arising under the Credit Agreement or the other Loan Documents.

7. Conditions Precedent. The effectiveness of this Amendment No. 5 shall be subject to the satisfaction of each of the following conditions:

7.1. Agent shall have received executed counterparts (originals or electronic copies) of this Amendment No. 5, duly authorized, executed and delivered by Agent, each of the Lenders and the Loan Parties;

7.2. Agent shall have received projected balance sheets, income statements, statements of cash flows and availability of Borrower and its Restricted Subsidiaries giving effect to the Amendment No. 5 Transactions, covering the term of the Revolving Credit Facility (as amended hereby), which projections shall be on a monthly basis for the twelve-month period following the Amendment No. 5 Effective Date, a quarterly basis for the twelve-month period thereafter and on an annual basis thereafter for the term of the Revolving Credit Facility, in each case with the results and assumptions in all of such projections in form and substance satisfactory to Agent;

7.3. Agent shall have received, each in form and substance reasonably satisfactory to Agent, (a) customary legal opinions, (b) customary evidence of authority from each Loan Party, (c) customary officer's certificates from each Loan Party, (d) good standing certificates (to the extent applicable) in the respective jurisdictions of organization of each Loan Party, and (e) lien searches with respect to each Loan Party. Agent, for the benefit of itself, Lenders, Issuing Bank and bank product providers, shall hold perfected, security interests in and liens upon the Collateral in the order of priority set forth in the Term Loan Intercreditor Agreement, and Agent shall have received such evidence of the foregoing as it reasonably requires;

7.4. Agent shall have received evidence that (a) Borrower and Guarantors have entered into Amendment No. 1 to Letter of Credit Facility Agreement, dated of even date herewith, by and among the Company, as borrower, the lenders from time to time parties thereto, and Supplemental Letter of Credit Facility Agent which shall be on terms and conditions reasonably satisfactory to Agent and Lenders, and (b) the conditions to the effectiveness thereof have been satisfied;

7.5. Excess Availability on the Amendment No. 5 Effective Date after the application of proceeds of any initial funding under the Credit Agreement on the Amendment No. 5 Effective Date, and after payment of all fees and expenses related to the Amendment No. 5 Transactions payable on the Amendment No. 5 Effective Date, shall be not less than \$17,000,000;

7.6. Agent shall have received executed counterparts (originals or electronic copies) of the Amendment No. 5 Fee Letter, duly authorized, executed and delivered by Agent and Borrower and the payment of all fees required to be paid on the Amendment No. 5 Effective Date under the terms thereof or otherwise under the Loan Documents;

7.7. Agent shall have received an update of the Borrowing Base consistent with Agent's customary procedures and practices so as to obtain current results;

7.8. after giving effect to this Amendment No. 5, no Default or Event of Default shall exist or have occurred and be continuing;

7.9. no material adverse change in the business, operations, profits, assets or prospects of Loan Parties shall have occurred since September 30, 2022; and

7.10. Agent and Lenders shall have received payment of all reasonable and documented out-of-pocket costs and expenses (including, without limitation, the reasonable and documented fees and expenses of counsel for Agent).

Agent shall notify Borrower and Lenders of the Amendment No. 5 Effective Date and such notice shall be conclusive and binding.

8. Effect of Amendment No. 5. Except as expressly set forth herein, no other amendments, changes or modifications to the Loan Documents are intended or implied, and in all other respects the Loan Documents are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and the Loan Parties shall not be entitled to any other or further amendment by virtue of the provisions of this Amendment No. 5 or with respect to the subject matter of this Amendment No. 5. To the extent of conflict between the terms of this Amendment No. 5 and the other Loan Documents, the terms of this Amendment No. 5 shall control. The Credit Agreement and this Amendment No. 5 shall be read and construed as one agreement. This Amendment No. 5, including Exhibit A hereto, is a Loan Document.

9. Jurisdiction. The provisions of Section 9.13 of the Credit Agreement shall apply with like effect to this Amendment No. 5.

10. Binding Effect. This Amendment No. 5 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

11. Waiver, Modification, Etc. No provision or term of this Amendment No. 5 may be modified, altered, waived, discharged or terminated orally or by course of conduct, but only by an instrument in writing executed by the party against whom such modification, alteration, waiver, discharge or termination is sought to be enforced.

12. Further Assurances. The Loan Parties shall execute and deliver such additional documents and take such additional action as may be reasonably requested by Agent to effectuate the provisions and purposes of this Amendment No. 5 or otherwise in connection with the amendments provided for herein, including with respect to any Loan Documents governed by the laws of any jurisdiction outside of the United States.

13. Entire Agreement. This Amendment No. 5 represents the entire agreement and understanding concerning the subject matter hereof among the parties hereto, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written.

14. Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 5.

15. Counterparts. This Amendment No. 5 may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement and may be executed by means of (i) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Any party delivering an executed counterpart of this Amendment No. 5 by electronic method of transmission shall also deliver an original executed counterpart of this Amendment No. 5, but the failure to do so shall not affect the validity, enforceability, and binding effect of this Amendment No. 5.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 5 to be duly executed and delivered by their authorized officers as of the day and year first above written.

EASTMAN KODAK COMPANY

By: /s/ Matthew C. Ebersold
Name: Matthew C. Ebersold
Title: Treasurer

FAR EAST DEVELOPMENT LTD.
KODAK (NEAR EAST), INC.
KODAK AMERICAS, LTD.
EASTMAN KODAK INTERNATIONAL CAPITAL
COMPANY, INC.

By: /s/ Matthew C. Ebersold
Name: Matthew C. Ebersold
Title: Treasurer

KODAK PHILIPPINES, LTD.

By: /s/ Matthew C. Ebersold
Name: Matthew C. Ebersold
Title: Treasurer

Agent and Lenders

BANK OF AMERICA, N.A.,
as Agent and a Lender

By: /s/ Matthew T. O'Keefe
Name: Matthew T. O'Keefe
Title: Senior Vice President

JPMORGAN CHASE BANK, N.A.,
as a Lender

By: /s/Richard Ong Pho

Name: Richard Ong Pho

Title: Executive Director

SIEMENS FINANCIAL SERVICES, INC.,
as a Lender

By: /s/ Jeffrey B. Iervese
Name: Jeffrey B. Iervese
Title: Vice President

By: /s/ Richard Holston
Name: Richard Holston
Title: Vice President

WEBSTER BUSINESS CREDIT, a Division of Webster Bank, N.A., successor by merger to Webster Business Credit Corporation, as a Lender

By: /s/ George Kwong
Name: George Kwong
Title: Managing Director

CREDIT SUISSE AG,
as a Lender

By: /s/ Vipul Dhadha
Name: Vipul Dhadha
Title: Authorized Signatory

By: /s/ Wesley Cronin
Name: Wesley Cronin
Title: Authorized Signatory

Exhibit A
to
Amendment No. 5 to Amended and Restated Credit Agreement

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of May 26, 2016
as amended through March 14, 2023

among

EASTMAN KODAK COMPANY
as Borrower

and

THE GUARANTORS NAMED HEREIN
as Guarantors

and

THE LENDERS NAMED HEREIN
as Lenders

and

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

and

BANK OF AMERICA, N.A.

and

JPMORGAN CHASE BANK, N.A.
as Joint Lead Arrangers and Joint Bookrunners

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- Exhibit D - Form of Solvency Certificate
- Exhibit E - Form of Guaranty Supplement
- Exhibit F - Form of Borrowing Base Certificate
- Exhibit G - Form of Bank Products Obligations Agreement
- Exhibit H - Form of Compliance Certificate
- Exhibit I - [Intentionally deleted]

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of May 26, 2016,

as amended through March 14, 2023

EASTMAN KODAK COMPANY, a New Jersey corporation (the "Borrower" or "Company"), the Guarantors (as hereinafter defined), the banks, financial institutions and other institutional lenders (the "Lenders") and issuers of letters of credit from time to time party hereto, BANK OF AMERICA, N.A. and JPMORGAN CHASE BANK, N.A., as joint lead arrangers and joint bookrunners, BANK OF AMERICA, N.A., as administrative agent and collateral agent for the Lenders agree as follows:

WHEREAS, the Borrower entered into that certain Credit Agreement, dated as of September 3, 2013, among the Borrower, the Guarantors, the banks, financial institutions and other institutional lenders and issuers of letters of credit from time to time party thereto, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Bank PLC and J.P. Morgan Securities LLC, as joint lead arrangers and joint bookrunners, Barclays Bank PLC, as syndication agent, and Bank of America, N.A., as administrative agent and collateral agent for the Lenders (as amended, supplemented or otherwise modified prior to the Closing Date, the "Existing Credit Agreement");

WHEREAS, this Agreement amends and restates the Existing Credit Agreement in its entirety and without novation and shall, upon execution by all parties to the Existing Credit Agreement (and the Non-Consenting Lenders solely for purposes of Section 2.25) and the satisfaction or waiver of the conditions set forth in Section 3.01, be binding on all parties hereto;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto hereby agree that on the Closing Date, the Existing Credit Agreement shall be amended and restated in its entirety as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"ABL Priority Collateral" has the meaning set forth in the Term Loan Intercreditor Agreement and after the termination of the Term Loan Intercreditor Agreement, shall mean all Collateral.

"Acceptable Foreign Currency," means Pounds Sterling, Euros, the currencies listed on Schedule 1.01(a), any other currency used in the ordinary course of business of the Company and its Restricted Subsidiaries for cash management purposes outside the United States and any other currency as may be approved by the Agent from time to time in its sole discretion.

"Account Debtor" means each Person obligated on an Account.

"Acquisition" means a transaction or series of transactions resulting in (a) acquisition of a business, division or substantially all assets of a Person; (b) record or beneficial ownership of 50% or more of the equity interests of a Person; or (c) merger, consolidation or combination of the Borrower or a Restricted Subsidiary with another Person.

“Account” has the meaning specified in the UCC.

“ACH” means automated clearinghouse transfers.

“Activities” has the meaning specified in Section 8.02(b).

“Additional Guarantor” has the meaning specified in Section 7.05.

“Adjustment Date” has the meaning specified in the definition of “Applicable Margin”.

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

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

“Affected Lender” has the meaning specified in Section 2.20.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or executive officer of such Person. For purposes of this definition, the term “control” (including the terms “controlling”, “controlled by” and “under common control with”) of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

“Agent” means, Bank of America, in its capacity as administrative and collateral agent under the Loan Documents, or any successor administrative agent appointed in accordance with Section 8.07.

“Agent Parties” has the meaning specified in Section 9.02(d).

“Agent’s Account” means the account of the Agent maintained by the Agent at its office as set forth on Schedule 9.02.

“Agent’s Group” has the meaning specified in Section 8.02(b).

“Agent Sweep Account” has the meaning specified in Section 2.18(b).

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

“Amendment No. 1” means to Amendment No. 1 to Amended and Restated Credit Agreement, dated as of November 7, 2016, by and among Agent, Lenders, and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

“Amendment No. 1 Effective Date” means the “Amendment Effective Date” as defined in Amendment No. 1.

“Amendment No. 2” means Amendment No. 2 to Amended and Restated Credit Agreement, dated as of May 24, 2019, by and among Agent, Lenders, and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

“Amendment No. 2 Effective Date” means the first date on which the conditions precedent set forth in Section 8 of Amendment No. 2 are satisfied as set forth in the notice from Agent to Borrower provided for in Section 8 of Amendment No. 2.

“Amendment No. 3” means the Amendment No. 3 to Amended and Restated Credit Agreement by and among Agent, Lenders, and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

“Amendment No. 3 Effective Date” means the first date on which the conditions precedent set forth in Section 5 of Amendment No. 3 are satisfied as set forth in the notice from Agent to Borrower provided for in Section 8 of Amendment No. 3.

“Amendment No. 4” means the Amendment No. 4 to Amended and Restated Credit Agreement by and among Agent, Lenders, and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

“Amendment No. 4 Effective Date” means the first date on which the conditions precedent set forth in Section 8 of Amendment No. 4 are satisfied as set forth in the notice from Agent to Borrower provided for in Section 8 of Amendment No. 4.

“Anti-Corruption Laws” means all laws, rules and regulations applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Lending Office” the office (including any domestic or foreign Affiliate or branch) designated as such by Agent, a Lender or Issuing Bank by notice to Borrower and, if applicable, Agent.

“Applicable Margin” means the rate per annum as determined pursuant to the pricing grid below based upon the average daily Excess Availability for the most recently ended fiscal quarter immediately prior to the Amendment No. 5 Effective Date; provided, that, on and after the first Adjustment Date after the Amendment No. 5 Effective Date, the Applicable Margin will be the rate per annum as determined pursuant to the pricing grid below based upon the average daily Excess Availability for the most recently ended fiscal quarter immediately preceding such Adjustment Date:

Tier	Average Daily Excess Availability	Applicable Margin for Base Rate Revolving Loans	Applicable Margin for Term SOFR Revolving Loans
I	Greater than 67% of the Revolving Credit Facility	2.50%	3.50%
II	Equal to or greater than 33% of the Revolving Credit Facility but less than or equal to 67% of the Revolving Credit Facility	2.75%	3.75%
III	Less than 33% of the Revolving Credit Facility	3.00%	4.00%

Any change in the Applicable Margin resulting from changes in average daily Excess Availability shall become effective on the first day of the calendar month following each fiscal quarter (the "Adjustment Date"); provided, that, the first Adjustment Date shall occur on the first day of the calendar month following the second full fiscal quarter after the Amendment No. 5 Effective Date. If the Agent is unable to calculate average daily Excess Availability for a fiscal quarter due to Borrower's failure to deliver any Borrowing Base Certificate when required hereunder, then, at the option of the Agent or the Required Lenders, margins shall be determined as if Tier III (rather than the Tier applicable for the prior period) were applicable until the first day of the calendar month following the receipt of the applicable Borrowing Base Certificate.

In the event that at any time after the end of a fiscal quarter it is discovered that the average daily Excess Availability for such fiscal quarter used for the determination of the Applicable Margin was less than the actual amount of the average daily Excess Availability for such fiscal quarter used to calculate the Applicable Margin, the Applicable Margin for such prior fiscal quarter shall be adjusted to the applicable percentage based on such actual average daily Excess Availability for such fiscal quarter and any additional interest for the applicable period payable as a result of such recalculation shall be promptly paid to the Lenders.

"Applicable Percentage" means, (a) three-eighths percent (0.375%) per annum when the aggregate amount of the Unused Revolving Credit Commitments is less than or equal to fifty percent (50%) of the Revolving Credit Facility or (b) one-half percent (0.50%) per annum when the aggregate amount of the Unused Revolving Credit Commitments is greater than fifty percent (50%) of the Revolving Credit Facility.

"Approved Fund" means any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender; provided, that, an Approved Fund shall not include any Disqualified Institution.

"Arrangers" means Bank of America, N.A. and JPMorgan Chase Bank, N.A. in their respective capacities as joint lead arrangers and joint bookrunners.

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit C hereto.

"Assuming Lender" has the meaning specified in Section 2.21(d).

"Assumption Agreement" has the meaning specified in Section 2.21(d).

"Auto-Extension Letter of Credit" has the meaning specified in Section 2.03(a).

“Available Amount” of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing). For purposes of computing the amounts available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. 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 any rule under the ISP or any article of the UCP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“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, regulation, rule 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 1 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.

“Bank Product Agreements” means, those agreements entered into from time to time by any Loan Party or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products to the extent designated in a Bank Products Obligations Agreement.

“Bank Products” means any of the following products, services or facilities extended to a Loan Party or Affiliate of a Loan Party by a Bank Product Provider: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; and (d) other banking products or services.

“Bank Product Obligations” means Debt, obligations and other liabilities with respect to Bank Products owing by a Loan Party or an Affiliate of a Loan Party to a Bank Product Provider; to the extent designated as such by the Company in writing to the Agent from time to time in accordance herewith, provided, that, Bank Product Obligations of a Loan Party shall not include its Excluded Swap Obligations.

“Bank Products Obligations Agreement” means an agreement in substantially the form attached hereto as Exhibit G, in form and substance satisfactory to the Agent, duly executed by the applicable Bank Product Provider, the Company, and the Agent; provided, that, no Bank Products Obligations Agreement shall be required with respect to Bank Products provided by Bank of America, N.A. or any of its Affiliates.

“Bank Product Provider” means (a) Bank of America or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender to the extent of any Bank Products furnished by such Lender or Affiliate of a Lender on the Initial Closing Date or, if such Bank Products are established by a Lender or Affiliate of a Lender after the Initial Closing Date, to the extent such Person was a Lender or an Affiliate of a Lender on the date such Bank Product is established; provided, that, in each case a Bank Product Obligations Agreement has been duly executed and delivered to the Agent within ten (10) days following the later of the Initial Closing Date or creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by Section 8.13.

“Bank Product Reserve” means the aggregate amount of reserves established by the Agent against the Borrowing Base from time to time in its Permitted Discretion in respect of Bank Product Obligations.

"Bankruptcy Code" shall mean title 11 of the United States Code, as in effect from time to time.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of New York.

"Bankruptcy Law" means any proceeding of the type referred to in Section 6.01(e) of this Agreement or the Bankruptcy Code or any similar foreign, federal, provincial or state law for the relief of debtors.

"Base Rate" means for any day, a fluctuating per annum rate equal to the greatest of (a) the rate of interest in effect for such day as publicly announced from time to time by the Agent as its "prime rate" for such day; (b) the Federal Funds Rate for such day, plus one-half percent (0.50%); (c) Term SOFR for a one month interest period as of such day, plus one percent (1.0%), subject to the interest rate floor set forth therein or (d) the Floor. The "prime rate" and the "base rate" is a rate set by the Agent based upon various factors including the Agent'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 or base rate announced by the Agent shall take effect at the opening of business on the day specified in the announcement of such change.

"Base Rate Revolving Loan" means a Revolving Loan that bears interest based on the Base Rate.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"BHC Act Affiliate" of a Person means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such Person.

"Board of Governors" means the Board of Governors of the Federal Reserve System.

"Bona Fide Debt Fund" means a debt fund or other investment vehicle engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds or similar extensions of credit in the ordinary course of business and whose managers have fiduciary duties to third party investors in such fund or investment vehicle.

"Borrower" has the meaning in the introductory paragraph hereto.

"Borrower Information" has the meaning specified in Section 9.09.

“Borrowing” means a borrowing consisting of Revolving Loans of the same Class and Type made, converted or continued on the same day and in the case of Term SOFR Revolving Loans, having the same Interest Period.

“Borrowing Base” means, at any time, the amount equal to the Loan Value less applicable Reserves.

“Borrowing Base Certificate” means a certificate in substantially the form of Exhibit F hereto (with such changes therein as may be required by the Agent in its Permitted Discretion to reflect the components of, and Reserves against, the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of the Company, which shall include detailed calculations as to the Borrowing Base as reasonably requested by the Agent.

“Borrowing Base Deficiency” means, at any time, the failure of the Borrowing Base to equal or exceed Revolving Credit Facility Usage.

“Business Day” means a day of the year on which banks are not required or authorized by law to close in the states of North Carolina and New York.

“Capital Expenditures” means, without duplication, any expenditure of money for any purchase or other acquisition of any asset which, in conformity with GAAP, would be required to be classified as a capital expenditure on the Consolidated statement of cash flows of the Company and its Restricted Subsidiaries; provided, that, the term “Capital Expenditures” shall not include (a) any additions to property, plant and equipment and other expenditures made in connection with the replacement, substitution, restoration, repair or improvement of assets to the extent made with (i) the proceeds of equity issuances of, or capital contributions to the Company, provided those expenditures are made substantially contemporaneously with the equity issuances or capital contributions as the case may be, (ii) Debt borrowed (excluding borrowings under this Agreement, the Term Loan Agreement, the Supplemental Letter of Credit Facility Agreement and the Convertible Note Documents) by the Company or any Restricted Subsidiary in connection with such capital expenditures, (iii) the proceeds from any casualty insurance or condemnation or eminent domain paid on account of the loss of or damage to the assets being replaced, substituted, restored, repaired or improved, to the extent that the proceeds therefrom are utilized or committed to be utilized for capital expenditures within twelve (12) months of the receipt of such proceeds and (if so committed) are so utilized within twelve (12) months of the receipt of such proceeds, or (iv) the proceeds from any sale or other Disposition of the Company’s or any Restricted Subsidiary’s assets (other than assets constituting Collateral consisting of Accounts and the proceeds thereof), to the extent that the proceeds therefrom are utilized or committed to be utilized for capital expenditures within twelve (12) months of the receipt of such proceeds and (if so committed) are so utilized within twelve (12) months of the receipt of such proceeds, (b) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in of existing equipment solely to the extent of the amount of such purchase price reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (c) expenditures that constitute operating lease expenses in accordance with GAAP, (d) expenditures that constitute Permitted Acquisitions or other investments that consist of the purchase of a business unit, line of business or a division of a Person or all or substantially all of the assets of a Person, (e) any expenditures which are paid by a third party or which are contractually required to be, and are, reimbursed to the Loan Parties in cash by a third party (including landlords) during such period of calculation or (f) any non-cash capitalized interest expense reflected as additions to property, plant or equipment in the consolidated balance sheet of the Company and the Restricted Subsidiaries.

“Capital Lease Obligations” means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP (as of the date hereof) and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP. For the avoidance of doubt, operating leases shall also be accounted for in accordance with GAAP in effect as of the date hereof.

“Captive Insurance Subsidiary” means any Subsidiary that is subject to regulation as an insurance company.

“Cases” means the cases under Chapter 11 of the Bankruptcy Code of Borrower and certain of the Guarantors, each as debtor-in-possession, which have been jointly administered as Chapter 11 Case No. 12-10201(ALG) and which are pending in the Bankruptcy Court.

“Cash Collateralize” means, in respect of an Obligation, provide and pledge (as a first priority perfected security interest) cash collateral in Dollars in an amount equal to one hundred five percent (105%) of such Obligation, at a location and pursuant to documentation in form and substance reasonably satisfactory to the Agent (and “Cash Collateralization” has a corresponding meaning).

“Cash Control Trigger Event” means either (a) the occurrence and continuance of an Event of Default or (b) the failure of the Borrower to maintain Excess Availability of at least the greater of (i) twelve and one-half percent (12.5%) of the Line Cap and (ii) \$11,250,000. For purposes of this Agreement, the occurrence of a Cash Control Trigger Event shall be deemed to be continuing (A) until such Event of Default has been cured or waived and/or (B) if the Cash Control Trigger Event arises under clause (b) above, until Excess Availability is equal to or greater than the applicable amount set forth above for sixty (60) consecutive days, at which time a Cash Control Trigger Event shall no longer be deemed to be occurring for purposes of this Agreement.

“Cash Equivalents” means any of the following:

- (a) Acceptable Foreign Currencies;
- (b) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality of the United States of America (provided that the full faith and credit of the United States of America is pledged in support of those securities) having maturities of not more than twenty-four (24) months from the date of acquisition;
- (c) obligations issued or fully guaranteed by any state of the United States of America or any political subdivision of any such state or province or any instrumentality thereof maturing within one (1) year from the date of acquisition and having a rating of either “A” or better from S&P or A2 or better from Moody’s;
- (d) certificates of deposit and eurodollar time deposits with maturities of one (1) year or less from the date of acquisition, banker’s acceptances with maturities not exceeding one (1) year and overnight bank deposits, in each case, with any Lender or with any United States commercial bank having capital and surplus in excess of \$250,000,000;
- (e) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (b), (c), and (d) above entered into with any financial institution meeting the qualifications specified in clause (d) above;

(f) commercial paper rated at least "P-2" by Moody's or at least "A-2" by S&P, in each case, maturing within one (1) year after the date of acquisition;

(g) money market funds that either are (x) SEC.270.2a-7 compliant, (i) enhanced cash funds having a weighted average maturity of not greater than one hundred twenty (120) days or (ii) investing at least ninety-five percent (95%) of their assets in securities of the types described in clauses (a) through (f) above;

(h) offshore overnight interest bearing deposits in foreign branches of the Agent, any Lender or an Affiliate of a Lender; or

(i) instruments equivalent to those referred to in clauses (a) through (h) above of comparable tenor to those referred to above, denominated in any Acceptable Foreign Currency and used in the ordinary course of business of the Borrower and its Subsidiaries for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required or advisable in connection with any business conducted by the Borrower or any Subsidiary.

"Cash Management Services" means services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

"CFC" means an entity that is a "controlled foreign corporation" of the Company under Section 957 of the Code or an entity all or substantially all of the assets of which consist of equity interests in one or more CFCs, and any entity which would be a "controlled foreign corporation" except for any alternate classification under Treasury Regulation 301.7701-3, or any successor provisions to the foregoing.

"Change of Control" means, at any time, (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities and Exchange Act of 1934 (the "Exchange Act"), other than a Permitted Holder (or group consisting of Permitted Holders), is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Voting Stock of the Company representing more than 35% of the voting power of all Voting Stock of the Company, and (b) during any period of two (2) consecutive years (commencing immediately following the Closing Date), individuals who at the beginning of such period constituted the board of directors of the Company (together with any new directors whose election by such board of directors or whose nomination for election by the Company's shareholders was approved by a vote of a majority of the Company's directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Company's directors then in office (excluding any directors from the numerator and denominator of such calculation to the extent such director is or was designated by a Permitted Holder (or group consisting of Permitted Holders) or pursuant to a contractual agreement with the Company existing on the Closing Date).

"Chapter 11 Plan" means the First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and its Debtor Affiliates, dated August 21, 2013, as amended, supplemented or otherwise modified from time to time in accordance with Section 3.01(f) of the Existing Credit Agreement, and together with all exhibits, schedules, annexes, supplements and other attachments thereto.

“Class” means (a) when used with respect to any Commitment, whether such Commitment is a Non-Extended Revolving Credit Commitment or an Extended Revolving Credit Commitment, or (b) when used with respect to Revolving Loans or a Borrowing, whether such Revolving Loans, or the Revolving Loans comprising such Borrowing, are Revolving Loans under a Non-Extended Revolving Credit Commitment or Revolving Loans under an Extended Revolving Credit Commitment.

“Closing Date” means the first date on which all of the conditions precedent in Article III are satisfied or waived in accordance with Article III.

“Closing Date Transactions” means, collectively, (a) the execution, delivery and performance of, this Agreement and the other Loan Documents and (b) all other related transactions including the payment of fees and expenses in connection therewith.

“CME” means CME Group Benchmark Administration Limited.

“Code” means the United States Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

“Collateral” means all “Collateral” as defined in the Security Agreement and the other Collateral Documents.

“Collateral Documents” means the Security Agreement, the Control Agreements, each of the other collateral documents, instruments and agreements delivered pursuant to Section 5.01(i) or (j), and each other security agreement or other instrument or document executed and delivered by any Loan Party to secure any of the Obligations or, with respect to Collateral Documents governed by the laws of the Netherlands, the Obligations of Borrower under the Parallel Debt.

“Commitment” means a Letter of Credit Commitment and/or a Revolving Credit Commitment, as the context may require.

“Commitment Increase” has the meaning specified in Section 2.21(a).

“Commitment Letter” means that certain Commitment Letter, dated as of April 28, 2016 among Bank of America, N.A., as an Arranger, the Agent, and the Company (as amended, supplemented or otherwise modified from time to time).

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

“Company” has the meaning in the introductory paragraph hereto.

“Competitor” means those Persons who are directly or indirectly engaged in the same or similar line of business as the Company or its Subsidiaries.

“Compliance Certificate” means a certificate substantially in the form attached as Exhibit H or in such other form as reasonably agreed by the Agent and the Company, by which Company certifies compliance of the Borrower in accordance with Section 5.03.

“Concentration Account” means each Deposit Account, other than an Excluded Account, maintained by a Loan Party in which funds of such Loan Party from one or more Deposit Accounts are concentrated.

"Confirmation Order" means the Order Confirming the Chapter 11 Plan entered by the Bankruptcy Court in the Cases on August 23, 2013.

"Conforming Changes" means with respect to use, administration of or conventions associated with SOFR, Term SOFR or any proposed Successor Rate, as applicable, any conforming changes to the definitions of Base Rate, SOFR, Term SOFR and 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 definitions of Business Day and U.S. Government Securities Business Day, timing of borrowing requests or prepayment, conversion or continuation notices, and length of lookback periods) as may be appropriate, in Agent's discretion, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent determines 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 Agent determines is reasonably necessary in connection with the administration of any Loan Document).

"Consolidated" refers to the consolidation of accounts in accordance with GAAP.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income for the most recently completed Measurement Period, plus the following to the extent reducing Consolidated Net Income (without duplication):

(a) Consolidated Interest Charges,

(ii) provision for taxes based on income, profits or capital gains, including foreign, federal, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) of such Person paid or accrued during such period,

(iii) accretion, depreciation and amortization expense (excluding amortization of a prepaid cash item that was paid and not expensed in a prior period, other than in respect of licenses provided to the Company or a Restricted Subsidiary in connection with the settlement of litigation),

(iv) any non-cash charges (other than (1) amortization of a prepaid cash item that was paid and not expensed in a prior period and (2) write down of current assets) including: (a) write-downs of property, plant and equipment and other assets, (b) impairment of intangible assets, (c) losses resulting from cumulative effect of changes in accounting principles, (d) net foreign currency revaluation of intercompany indebtedness and remeasurement losses or gains related to the balance sheet of the Company and its Restricted Subsidiaries, (e) losses on sales of accounts receivable, (f) provisions for asset retirement obligations, (g) provisions for environmental restoration and remedial action, (h) net non-cash mark-to-market charges relating to hedging arrangements, (i) unrealized losses from Hedging Agreements and unrealized losses from foreign currency transactions and (j) commercial capital expenses not included in depreciation expenses for such period; provided, that, if such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent,

(v) fees, costs, charges, commissions, operating losses, write-downs and expenses (including (A) fees, costs and expenses related to legal, financial, restructuring and other advisors, auditors and accountants, (B) printer costs and expenses, (C) U.S. Securities and Exchange Commission and other filing fees and (D) underwriting, arrangement, syndication, issuance backstop and placement premiums, discounts, fees, costs and expenses) paid, reimbursed or incurred during such period in connection with the negotiation, execution and ongoing performance of the Loan Documents, the Term Loan Documents, the Supplemental Letter of Credit Facility Documents, the Series B Preferred Stock, the Series C Preferred Stock and the Convertible Note Documents (and any Permitted Refinancing of any of the foregoing), and, in each case, any transaction (including any financing, acquisition or disposition, whether or not consummated) or litigation related thereto or contemplated by any of the foregoing, in each case, regardless of whether initially incurred by the Company or paid by the Company to reimburse others for such fees, costs and expenses,

(vi) any extraordinary expenses, charges or losses,

(vii) any non-recurring or unusual expenses, charges or losses in an amount not to exceed for any four fiscal quarter period, the greater of (A) five percent (5%) of Consolidated EBITDA for such period (calculated after giving effect to any amounts added to Consolidated EBITDA pursuant to this clause (vii) and clauses (xi) and (xii) and Section 1.07) and (B) \$10,000,000,

(viii) fees, costs and expenses (including fees, costs and expenses related to (A) legal, financial and other advisors, auditors and accountants, (B) printer costs and expenses, (C) SEC and other filing fees and (D) underwriting, arrangement, syndication, backstop and placement premiums, discounts, fees, charges and expenses) of the Company and its Restricted Subsidiaries, incurred as a result of Permitted Acquisitions, Investments, Dispositions, issuance of equity interests or issuance, waiver, refinancing or amendment of Debt, in each case to the extent permitted hereunder, whether or not consummated, other than any fees paid, or costs or expenses reimbursed to any Restricted Subsidiary of the Company other than from a Person that is the Company or any of its Restricted Subsidiaries,

(ix) deferred or amortized financing fees (and any write-offs thereof) for such period,

(x) any cash expenses or losses funded during such period with payments from assets of the Kodak Retirement Income Plan as in effect on January 19, 2012,

(xi) business optimization expenses and restructuring charges and reserves for such period; provided, that, with respect to each such business optimization expense or restructuring charge or reserve pursuant to this subclause (xi), the Company shall have delivered to the Agent an officer's certificate specifying and quantifying such expense, charge or reserve and stating that such expense, charge or reserve is a business optimization expense or restructuring charge or reserve,

(xii) the amount of cost savings and synergies projected by the Company in good faith to be realized as a result of specified actions taken or expected to be taken prior to or during such period (which cost savings or synergies shall be subject only to certification by a Responsible Officer of the Company and shall be calculated on a pro forma basis as though such cost savings or synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized during such period from such actions; provided, that, (A) such cost savings or synergies are reasonably identifiable and factually supportable, and (B) such actions have been taken or are to be taken within twelve (12) months after the date of determination to take such action; provided, further, that aggregate amounts added pursuant to this subclause for any period shall not in the aggregate exceed the greater of (1) \$10,000,000 or (2) five percent (5%) of the Consolidated EBITDA (calculated without giving effect to this clause or to Section 1.07(c)),

(xiii) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions or insurance in any agreement, to the extent such indemnification or insurance coverage has not been disclaimed or denied and is reasonably expected to be paid within one hundred eighty (180) days of any claim made therefor (provided, that, if such expenses are not reimbursed within such one hundred eighty (180) day period, for purposes of calculating Consolidated EBITDA for any fiscal period in which an addback pursuant to this clause (xiii) has been taken, Consolidated EBITDA shall be re-calculated going forward excluding the addback pursuant to this clause (xiii) for such period),

(xiv) any proceeds from business interruption, casualty or liability insurance received by such Person during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income,

(xv) expenses, charges and accruals for and reserves in respect of any charges, costs or expenses related to Pension Agreements, minus,

(b) without duplication and to the extent included in Consolidated Net Income for such period, the sum of (i) interest income (except to the extent deducted in determining Consolidated Interest Charges), (ii) income, profits or capital gains tax credits, (iii) other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents a reversal of an accrual or reserve for potential cash loss that was deducted and not added back to Consolidated EBITDA in any prior period) (provided, that, any cash received with respect to any non-cash items of income (other than extraordinary gains) for any prior period shall be added to the computation of Consolidated EBITDA), (iv) (A) any unusual or non-recurring income or gains not to exceed amounts that can be added back to Consolidated EBITDA pursuant to subclause (a)(vii) or (B) extraordinary income or gains, in each case including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sale of assets outside of the ordinary course of business, (v) any other non-cash income arising from the cumulative effect of changes in accounting principles, (vi) provision for environmental restoration and remedial actions for continuing operations added back pursuant to clause (a)(iv) of this definition to the extent actually paid in cash, (vii) income and gains in respect of Pension Agreements and (viii) cash payments in respect of Pension Agreements, made in the period for which Consolidated EBITDA is being calculated.

Notwithstanding anything herein to the contrary, the add-backs permitted under clauses (vii), (xi) and (xii) above shall not exceed seven and one-half percent (7.5%) of Consolidated EBITDA.

“Consolidated Interest Charges” means, for any Measurement Period, all interest, premium payments, debt discount, fees, charges and related expenses in connection with Debt for Borrowed Money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including all commissions, discounts and other fees and charges owed with respect to Permitted Receivables Financings, letters of credit and bankers’ acceptance financing and net costs under Hedging Agreements, but excluding (a) any interest paid, directly or indirectly, to any Loan Party by the Company and its Restricted Subsidiaries, (b) any non-cash or deferred interest and financing costs (including any legal and accounting costs, fees on account of bridge, commitment and other financings, any non-cash accretion or accrual of discounted liabilities not constituting Debt, all as determined on a consolidated basis in accordance with GAAP) and (c) amortization or write-off of deferred financing fees, debt issuance costs, commissions, fees and expenses, including expenses resulting from the discounting of any outstanding Debt in connection with the application of purchase accounting and/or fresh start accounting in connection with any acquisition.

“Consolidated Net Income” means, as of any date of determination, the net income of the Company and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a consolidated basis in accordance with GAAP; provided, however, that there shall be excluded:

(a) the net income (or loss) of any Person that is not a Restricted Subsidiary, except to the extent of the amount of dividends, distributions or other payments actually paid in cash (or to the extent converted into cash) to the Company or any of its wholly owned Restricted Subsidiaries during such period,

(b) the income (or loss) of any Person (other than a Subsidiary of the Company) in which the Company or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Company or any Restricted Subsidiary in the form of dividends or similar distributions,

(c) the income (or loss) of any Person during such Measurement Period and accrued prior to the date it becomes a Restricted Subsidiary of the Company or any of the Company's Restricted Subsidiaries or is merged into or consolidated with the Company or any of its Restricted Subsidiaries or such Person's assets are acquired by the Company or any of its Restricted Subsidiaries (but only the portion attributable to such Person or assets prior to the dates it became or is merged or consolidated with the Company or any Restricted Subsidiary or the assets were so acquired),

(d) any after-tax effect of gains or losses attributable to Dispositions or other dispositions or transfers of assets, in each case other than in the ordinary course of business and discontinued operations or disposal of discontinued operations, as determined in good faith by the Company,

(e) effects of adjustments (including the effects of such adjustments pushed down to the Company and its Restricted Subsidiaries) in such Person's consolidated financial statements (including to property, equipment, inventory and other assets) pursuant to GAAP resulting from the application of purchase accounting in relation to the Loan Documents and the transactions contemplated thereby or any consummated acquisition or the amortization or write-off of any amounts thereof (including the impact on net income (or loss) arising from mark-to-market adjustments with respect to earn-outs), net of taxes,

(f) (i) any non-cash compensation expense recorded from grants or periodic remeasurement of stock appreciation or similar rights, stock options, restricted stock or other rights and any cash charges associated with the rollover, acceleration, or payout of capital stock by management of the Company in connection with the Initial Closing Date Transactions, the Closing Date Transactions and (ii) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Company,

(g) any after-tax effect of income (or loss) from the early extinguishment of obligations under Hedging Agreements or other derivative instruments, or Debt,

(h) the undistributed earnings of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation or law applicable to such Subsidiary, and

(i) accruals and reserves and gains, losses or charges with respect to, or relating to, the KPP Settlement Agreement and the completion and implementation of the transactions contemplated thereby and in relation thereto.

“Consolidated Subsidiary” means any Person whose accounts are consolidated with the accounts of the Company 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.

“Convert”, “Conversion” and “Converted” each refers to a conversion of Revolving Loans of one Type into Revolving Loans of the other Type pursuant to Section 2.08 or 2.09.

“Control Agreement” means a control agreement with (a) the financial institution, at which any Loan Party maintains a deposit account (other than an Excluded Account) pursuant to which such financial institution shall agree with such Loan Party and the Agent to comply with instructions originated by the Agent directing the disposition of funds in such deposit account without the further consent of such Loan Party, such agreement to be in form and substance reasonably satisfactory to the Agent, and (b) the applicable securities intermediary, at which any Loan Party maintains a securities account pursuant to which such securities intermediary shall agree with such Loan Party and the Agent to comply with the instructions of the Agent with respect to such securities and securities account without the further consent of such Loan Party.

“Convertible Note Debt” means the Debt of the Company and its Subsidiaries under the Convertible Note Documents.

“Convertible Note Documents” means the Convertible Notes and each other agreement, certificate, document, or instrument executed or delivered by the Company or its Subsidiaries with or in favor of the Convertible Noteholders, and any and all renewals, extensions, amendments, modifications, refinancings or restatements of any of the foregoing.

“Convertible Noteholder” means any holder of a Convertible Note.

“Convertible Notes” means 5.0% convertible promissory notes, in an aggregate original principal amount of \$25,000,000, issued by the Borrower.

“Covered Entity” means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning specified therefor in Section 9.22 of this Agreement.

“Daily Simple SOFR” means with respect to any applicable determination date, the secured overnight financing rate published on the FRBNY website (or any successor source satisfactory to Agent).

“Debt” of any Person means (excluding the current portion of accrued liabilities in the ordinary course of business), without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) current accounts payable incurred in the ordinary course of business and accrued expenses and (ii) any earn-out obligations, except to the extent not paid after becoming due and payable or such obligations appear as a liability on the balance sheet of such Person in accordance with GAAP), (e) all Debt of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Debt secured thereby has been assumed, but only to the extent of such Lien, and only to the extent of the lesser of the fair market value of the property secured by the Lien and the amount of Debt, (f) all guarantees by such Person of Debt set forth in subclauses (a)-(e) and (g)-(k), (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (j) the obligations of such Person in respect of any Hedging Agreement and (k) all Disqualified Stock of such Person. The Debt of any Person shall include the Debt of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Debt provide that such Person is not liable therefor (but only for the portion so liable). For purposes of determining Debt, (x) the “principal amount” of the obligations of any Person in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such Hedging Agreement were terminated at such time and (y) in no event shall obligations under any Hedging Agreement be deemed “Debt” for calculating any financial ratio (or component thereof).

“Debt for Borrowed Money” of any Person means all items that, in accordance with GAAP, would be classified as short term borrowings and long term debt on a Consolidated statement of financial position of such Person.

“Default” means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

“Defaulted Amount” means, with respect to any Lender at any time, any amount required to be paid by such Lender to the Agent or any other Lender hereunder or under any other Loan Document at or prior to such time which has not been so paid as of such time, including, without limitation, any amount required to be paid by such Lender to (a) any Issuing Bank pursuant to Section 2.03(b) to purchase a participation in a Letter of Credit, (b) the Agent pursuant to Section 2.02(d) to reimburse the Agent for the amount of any Revolving Loan made by the Agent for the account of such Lender, (c) any other Lender pursuant to Section 2.15 to purchase any participation in Revolving Loans owing to such other Lender and (d) the Agent or any Issuing Bank pursuant to Section 8.05 to reimburse the Agent or such Issuing Bank for such Lender’s ratable share of any amount required to be paid by the Lenders to the Agent or such Issuing Bank as provided therein. In the event that a portion of a Defaulted Amount shall be deemed paid pursuant to Section 2.19(b), the remaining portion of such Defaulted Amount shall be considered a Defaulted Amount originally required to be paid hereunder or under any other Loan Document on the same date as the Defaulted Amount so deemed paid in part.

“Defaulted Revolving Loan” means, with respect to any Lender at any time, the portion of any Revolving Loan required to be made by such Lender to Borrower pursuant to Section 2.01 or 2.02 at or prior to such time which has not been made by such Lender or by the Agent for the account of such Lender pursuant to Section 2.02(d) as of such time. In the event that a portion of a Defaulted Revolving Loan shall be deemed made pursuant to Section 2.19(a), the remaining portion of such Defaulted Revolving Loan shall be considered a Defaulted Revolving Loan originally required to be made pursuant to Section 2.01 on the same date as the Defaulted Revolving Loan so deemed made in part.

“Defaulting Lender” means, at any time, a Lender as to which the Agent has notified the Company that (i) such Lender has failed for three (3) or more Business Days to comply with its obligations under this Agreement to make a Revolving Loan or make a payment to an Issuing Bank in respect of an Issuance (each a “funding obligation”), (ii) such Lender has notified the Agent, or has stated publicly, that it will not comply with any such funding obligation hereunder, (iii) such Lender has, for three (3) or more Business Days, failed to confirm in writing to the Agent, in response to a written request of the Agent, that it will comply with its funding obligations hereunder, (iv) a Lender Insolvency Event has occurred and is continuing with respect to such Lender or (v) such Lender has, or has a direct or indirect Parent Company that has, become the subject of a Bail-In Action. Any determination that a Lender is a Defaulting Lender under clauses (i) through (v) above will be made by the Agent in its sole discretion acting in good faith. The Agent will promptly send to all parties hereto a copy of any notice to the Company provided for in this definition.

“Default Interest” has the meaning specified in Section 2.07(c).

“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.

“Deposit Accounts” means any checking or other demand deposit account maintained by a Loan Party.

“Designated Guarantor” means each Guarantor with assets included in the Borrowing Base and designated on Schedule 1.01(d) hereto as a “Designated Guarantor”, which Schedule may be amended by the Company from time to time by delivery of an updated Schedule (identified as such) to the Agent.

“Designated Jurisdiction” means a country or territory that is the subject of any Sanction (including at the time of the Amendment No. 5 Effective Date, Crimea, the so-called Luhansk People’s Republic, the so-called Donetsk People’s Republic, Cuba, Iran, North Korea, Sudan and Syria).

“Dilution” means, as of any date, a percentage, based upon the experience of the twelve (12) month period ending as of the last day of the immediately preceding fiscal month, which is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, profit sharing deductions or other non-cash credits with respect to a Loan Party’s Accounts during such period determined consistently with the applicable Loan Party’s accounting practices, by (b) such Loan Party’s gross sales with respect to Accounts for such Loan Party during such period.

“Dilution Reserve” means, as of any date, an amount sufficient to reduce the advance rate against Eligible Receivables by one percentage point for each percentage point by which Dilution is in excess of five percent (5.0%).

“Disposition” or “Dispose” means the sale, transfer, exclusive license, lease or other disposition (including any sale and leaseback transaction), whether in one transaction or in a series of related transactions, of any property (including any equity interests) by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable; provided, that, for the avoidance of doubt, an issuance of equity interests is not a Disposition; provided, further, for the avoidance of doubt, that a non-exclusive license of intellectual property in the ordinary course of business shall be deemed not to be a Disposition.

"Disqualified Institution" means (a) those Persons identified to the Agent and the Lenders in writing on the Initial Closing Date, and (b) Competitors and their Affiliates that are not a Bona Fide Debt Fund identified to the Agent and the Lenders in writing (it being understood that the Company shall be permitted to supplement the list of Competitors and Affiliates in writing after the date hereof to the extent such supplemented Person becomes a Competitor (or an Affiliate of a Competitor) so long as such supplemented Person is not a Bona Fide Debt Fund). Any supplement shall be made available to the Lenders and shall become effective three (3) Business Days after delivery to the Agent. Notwithstanding anything herein to the contrary, in no event shall a supplement apply retroactively to disqualify any parties that have previously acquired an assignment or participation interest in the Revolving Loans that is otherwise permitted hereunder, but upon the effectiveness of such designation, any such party may not acquire any additional Revolving Loans or participations or other interest in Revolving Loans.

"Disqualified Stock" means any equity interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) except as set forth in the proviso hereto, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the ninetieth (90th) day after the Extended Maturity Date, or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any equity interest referred to in clause (a) above, in each case at any time prior to the ninetieth (90th) day after the Extended Maturity Date; provided, that, (i) only the portion of the equity interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; (ii) if such equity interests are issued to any plan for the benefit of employees of any company or by any such plan to such employees, such equity interests shall not constitute Disqualified Stock solely because they may be required to be repurchased by any company in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; and (iii) such equity interest may by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) become mandatorily redeemable or redeemable at the option of the holder thereof upon the occurrence of a change of control or Disposition subject to payment in full in cash of all Obligations (other than contingent indemnification obligations not then due and owing).

"Document" means a document of title, as defined in the UCC.

"Dollar" or "\$" means the lawful currency of the United States.

"EEA Financial Institution" means (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of an EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means with respect to the Revolving Credit Facility (a) a Lender; (b) an Affiliate or branch of a Lender; and (d) any other Person approved by (i) the Agent, (ii) each Issuing Bank and (iii) unless an Event of Default has occurred and is continuing at the time any assignment is effected in accordance with Section 9.08, the Company, in each case, such approval not to be unreasonably withheld or delayed (it being understood that a proposed assignee’s status as other than a financial institution shall be a reasonable basis for the Company to withhold its consent), provided, that, (A) the Company shall be deemed to have consented to such Person if the Company has not responded within five (5) Business Days of a request for such approval and (B) no Loan Party, Affiliate of a Loan Party or any Disqualified Institution shall qualify as an Eligible Assignee.

“Eligible Equipment” means Equipment of the Borrower and the Designated Guarantors subject to the Lien of the Collateral Documents, the value of which shall be determined based upon its Net Orderly Liquidation Value. Criteria and eligibility standards used in determining Eligible Equipment may be fixed and revised from time to time by the Agent in its Permitted Discretion. Unless otherwise from time to time approved in writing by the Agent, no Equipment shall be deemed Eligible Equipment if, without duplication:

(a) any such Equipment is located on leaseholds and is subject to landlord Liens or other Liens arising by operation of law that are senior or pari passu to the Liens in favor of the Agent, unless one of the following applies: (i) the lessor has entered into a Lien Waiver or (ii) a Rent and Charges Reserve has been taken with respect to such Equipment or, in the case of any third party premises, a Rent and Charges Reserve has been taken by the Agent in the exercise of its Permitted Discretion; or

(b) such Equipment is Equipment for which appraisals have not been completed by the Agent or a qualified independent appraiser reasonably acceptable to the Agent utilizing procedures and criteria reasonably acceptable to the Agent for determining the value of such Equipment; or

(c) such Equipment is Equipment in respect of which the Collateral Documents, after giving effect to the related filings of financing statements that have then been made, if any, do not or have ceased to create a valid and perfected first priority Lien or security interest in favor of the Agent, on behalf of the Secured Parties, securing the Secured Obligations; or

(d) Borrower or a Designated Guarantor does not have good, valid and unencumbered title thereto, subject only to Liens permitted under clause (a), (b) or (e) of the definition of Permitted Liens, Liens permitted under clause (ix) of Section 5.02(a) or Liens granted pursuant to any of the Loan Documents (“Permitted Collateral Liens”); or

(e) such Equipment is motor vehicles or other rolling stock that are or are required to be subject to certificates of title under applicable state laws, except as Agent may determine in its Permitted Discretion; or

(f) Equipment that is subject to a voluntary or mandatory recall or is otherwise subject to any similar action that renders it unsaleable.

"Eligible In-Transit Inventory" means Inventory owned by Borrower or a Designated Guarantor that would be Eligible Inventory if it were not subject to a Document and in transit from a location outside of the United States to a location of Borrower or a Designated Guarantor within the United States, and that the Agent, in its Permitted Discretion, deems to be Eligible In-Transit Inventory. Without limiting the foregoing, no Inventory shall be Eligible In-Transit Inventory unless it (a) is subject to a negotiable Document showing the Agent (or, with the consent of the Agent, Borrower or a Designated Guarantor) as consignee, which Document is in the possession of the Agent or such other Person as the Agent shall approve; (b) is fully insured in a manner satisfactory to the Agent; (c) is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory, or with respect to whom Borrower or such Designated Guarantor is in default of any obligations; (d) is subject to purchase orders and other sale documentation satisfactory to the Agent, and title has passed to Borrower or such Designated Guarantor; (e) is shipped by a common carrier that is not affiliated with the vendor and is not subject to Sanctions or any specially designated nationals list maintained by OFAC; and (f) is being handled by a customs broker, freight-forwarder or other handler that has delivered a Lien Waiver.

"Eligible Inventory" means, at the time of any determination thereof, without duplication, the Inventory Value of the Borrower and Designated Guarantors at such time that is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (p) below. Criteria and eligibility standards used in determining Eligible Inventory may be fixed and revised from time to time by the Agent in its Permitted Discretion (including, without limitation, criteria and eligibility standards to account for dispositions of Intellectual Property Collateral (as defined in the Security Agreement) that is material to the value or saleability of any Inventory). Unless otherwise from time to time approved in writing by the Agent, no Inventory shall be deemed Eligible Inventory if, without duplication:

(a) Borrower or a Designated Guarantor does not have good, valid and unencumbered title thereto, subject only to Permitted Collateral Liens; or

(b) it is not located in the United States; except for Eligible In-Transit Inventory having an aggregate Value not in excess of \$5,000,000 at any time; or

(c) it is either (i) a service part in the possession of or held by field engineers or (ii) located at third party premises or (except in the case of consigned Inventory, which is covered by clause (f) below) in another location not owned by Borrower or a Designated Guarantor, and is subject to landlord or warehousemen Liens or other Liens arising by operation of law, unless one of the following applies: (A) the premises is covered by a Lien Waiver or (B) a Rent and Charges Reserve has been taken with respect to such Inventory or, in the case of any third party premises, a Reserve has been taken by the Agent in the exercise of its Permitted Discretion; or

(d) it is operating supplies, labels, packaging or shipping materials, cartons, repair parts, labels, miscellaneous spare parts and other such materials not held for sale, in each case to the extent not considered used for sale in the ordinary course of business of the Borrower and Designated Guarantors by the Agent in its Permitted Discretion from time to time; or

(e) it is not subject to a valid and perfected first priority Lien in favor of the Agent; or

(f) it is consigned at a customer, supplier, contractor or shipper location but still accounted for in the Borrower's or Designated Guarantor's inventory balance, unless (i) if such Inventory is subject to landlord or consignee Liens or other Liens arising by operation of law, then such location is the subject of a Lien Waiver, (ii) the Agent is reasonably satisfied with the controls and reporting applicable to such Inventory and (iii) the aggregate amount of such Inventory does not exceed \$100,000 at any location at any time unless with the consent of the Agent; or

(g) it is Inventory that is in-transit to or from a location not leased or owned by a Borrower or Designated Guarantor other than any such in-transit Inventory (i) to Borrower or a Designated Guarantor or between Borrower and Designated Guarantors, that is physically in-transit within the United States and as to which a Reserve has been taken by the Agent if required in the exercise of its Permitted Discretion or (ii) that is Eligible In-Transit Inventory (subject to the limitations set forth in clause (b) above); or

(h) it is obsolete, slow-moving, nonconforming or unmerchantable or is identified as a write-off, overstock or excess by Borrower or a Designated Guarantor (as determined in accordance with the Company's policies which shall be substantially consistent with those in effect on the Closing Date or with such modifications requested by the Company from time to time and approved by the Agent in its Permitted Discretion), or does not otherwise conform to the representations and warranties contained in this Agreement and the other Loan Documents applicable to Inventory; or

(i) it is Inventory used as a sample or prototype, display or display item; or

(j) any Inventory that is damaged, defective or marked for return to vendor, has been deemed by Borrower or a Designated Guarantor to require rework or is being held for quality control purposes; or

(k) such Inventory does not meet all material applicable standards imposed by any Governmental Authority having regulatory authority over it; or

(l) any Inventory for which field audits and appraisals have not been completed by the Agent or a qualified independent appraiser reasonably acceptable to the Agent utilizing procedures and criteria acceptable to the Agent in its Permitted Discretion or determining the value of such Inventory; or

(m) any Inventory that has been acquired from an entity subject to Sanctions or any specially designated nationals list maintained by OFAC, or constitutes hazardous waste under any Environmental Law; or

(n) is in the possession of a warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate Rent and Charges Reserve has been established; or

(o) is not Inventory subject to any license or other arrangement that restricts the Borrower's or Designated Guarantors' or Agent's right to dispose of such Inventory, unless the Agent has received an appropriate Lien Waiver; or

(p) Inventory that is subject to a voluntary or mandatory recall or is otherwise subject to any similar action that renders it unsaleable.

“Eligible Receivables” means, at the time of any determination thereof, each Account of Borrower and each Designated Guarantor that satisfies the following criteria: such Account (i) has been invoiced to, and represents the bona fide amounts due to Borrower or a Designated Guarantor from, the purchaser of goods or services, in each case originated in the ordinary course of business of Borrower or such Designated Guarantor, and (ii) is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (v) below. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication and to the extent not included in Reserves, to the extent not reflected in such face amount: (A) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that Borrower or a Designated Guarantor may be obligated to rebate to a customer pursuant to the terms of any written agreement or understanding), (B) the aggregate amount of all limits and deductions provided for in this definition and elsewhere in this Agreement, if any, and (C) the aggregate amount of all cash received in respect of such Account but not yet applied by Borrower or a Designated Guarantor to reduce the amount of such Account. Criteria and eligibility standards used in determining Eligible Receivables may be fixed and revised from time to time by the Agent in its Permitted Discretion. Unless otherwise approved from time to time in writing by the Agent, no Account shall be an Eligible Receivable if, without duplication:

(a) (i) Borrower or a Designated Guarantor does not have sole lawful and absolute and unencumbered title to such Account subject only to Permitted Collateral Liens, or (ii) the goods sold with respect to such Account have been sold under a purchase order or pursuant to the terms of a contract or other written agreement or understanding that indicates that any Person other than Borrower or a Designated Guarantor has or has purported to have an ownership interest in such goods; or

(b) (i) it is unpaid for more than sixty (60) days from the original due date or (ii) it arises as a result of a sale with original payment terms in excess of ninety (90) days; or

(c) more than fifty percent (50%) in face amount of all Accounts of the same Account Debtor are ineligible pursuant to clause (b) above; or

(d) the Account Debtor is insolvent or the subject of any bankruptcy or insolvency case or proceeding of any kind (other than postpetition accounts payable of an Account Debtor that is a debtor-in-possession under the Bankruptcy Law and reasonably acceptable to the Agent); or

(e) (i) the Account is not payable in Dollars or other currency approved by the Agent in its Permitted Discretion (the Agent may establish a Reserve in its Permitted Discretion with respect to any currency other than Dollars) or (ii) the Account Debtor is either not organized under the laws of the United States of America, any state thereof, or the District of Columbia, or Canada or any province or territory thereof or is located outside or has its principal place of business or substantially all of its assets outside the United States or Canada, unless such Account is supported by a letter of credit from an institution and in form and substance reasonably satisfactory to the Agent in its sole discretion; or

(f) the Account Debtor is the United States of America or any department, agency or instrumentality thereof, unless Borrower or the relevant Designated Guarantor duly assigns its rights to payment of such Account to the Agent pursuant to the Assignment of Claims Act of 1940, or similar applicable law, each as amended, which assignment and related documents and filings shall be in form and substance reasonably satisfactory to the Agent; or

(g) to the extent of any security deposit, progress payment, retainage or other similar advance made by or for the benefit of the applicable Account Debtor, that portion of the Account as to which the Borrower or applicable Designated Guarantor has received any security deposit (to the extent received from the applicable Account Debtor), progress payment, retainage or other similar advance made by or for the benefit of the applicable Account Debtor; or

(h) (i) it is not subject to a valid and perfected first priority Lien in favor of the Agent or (ii) it does not otherwise conform in all material respects to the representations and warranties contained in this Agreement and the other Loan Documents relating to such Accounts; or

- (i) (i) such Account was invoiced in advance of goods being shipped or services being provided (but then only until such goods are shipped or such services are provided) or (ii) the associated revenue has not been earned; or
- (j) the sale to the Account Debtor is on a bill-and-hold, guaranteed sale, sale-and-return, ship-and-return, sale on approval or consignment or other similar basis or made pursuant to any other agreement providing for repurchases or return of any merchandise which has been claimed to be defective or otherwise unsatisfactory, which shall not include customary product warranties; or
- (k) the goods giving rise to such Account have not been shipped and/or title has not been transferred to the Account Debtor, or the Account represents a progress-billing or otherwise does not represent a complete sale; for purposes hereof, "progress-billing" means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor's obligation to pay such invoice is conditioned upon the completion by Borrower or a Designated Guarantor of any further performance under the contract or agreement; or
- (l) it arises out of a sale made by Borrower or a Designated Guarantor to an employee, officer, agent, director, Subsidiary or Affiliate (other than an Affiliate that is a Permitted Holder or an Affiliate of a Permitted Holder (other than any of the Company or its Subsidiaries)) provided, that, such sale arises in the ordinary course of business; or
- (m) such Account was not paid in full, and Borrower or a Designated Guarantor created a new receivable for the unpaid portion of the Account without the agreement of the Account Debtor, and other Accounts constituting chargebacks, debit memos and other adjustments for unauthorized deductions or put back on the aging until resolved by the credit department of the Company; or
- (n) the Account Debtor (i) has or has asserted a right of set-off, offset, deduction, defense, dispute, or counterclaim against Borrower or a Designated Guarantor (unless such Account Debtor has entered into a written agreement reasonably satisfactory to the Agent to waive such set-off, offset, deduction, defense, dispute, or counterclaim rights), (ii) has disputed its liability (whether by chargeback or otherwise) or made any claim with respect to the Account or any other Account of Borrower or a Designated Guarantor which has not been resolved, in each case of clause (i) and (ii), without duplication, only to the extent of the amount of such actual or asserted right of set-off, or the amount of such dispute or claim, as the case may be or (iii) is also a creditor or supplier of Borrower or a Designated Guarantor (but only to the extent of Borrower's or such Designated Guarantor's obligations to such Account Debtor from time to time); or
- (o) the Account does not comply in all material respects with the requirements of all applicable laws and regulations, whether federal, state, municipal, local or foreign including, without limitation, the Federal Consumer Credit Protection Act, Federal Truth in Lending Act and Regulation Z; or
- (p) as to any Account, to the extent that (i) a check, promissory note, draft, trade acceptance or other instrument for the payment of money has been received, presented for payment and returned uncollected for any reason or (ii) such Account is otherwise classified as a note receivable and the obligation with respect thereto is evidenced by a promissory note or other debt instrument or agreement; or
- (q) the Account is created in cash on delivery terms, bill-and-hold, sale or return, sale on approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes;

(r) an Insolvency Proceeding has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, is not Solvent, or is subject to Sanctions or any specially designated nationals list maintained by OFAC; or the Borrower or a Designated Guarantor is not able to bring suit or enforce remedies against the Account Debtor through judicial process;

(s) the Account is evidenced by chattel paper or an instrument of any kind, or has been reduced to judgment;

(t) the amount of any net credit balances relating to such Account is unused by the Account Debtor within sixty (60) days from the date the net credit balance was created;

(u) the Account arises from transactions with customers of Borrower or a Designated Guarantor under equipment and vendor financing programs permitted pursuant to Section 5.02(i)(xv); or

(v) at all times prior to the occurrence of the KPP Account Eligibility Date, any Account which is a KPP Account.

After giving effect to the foregoing, if the aggregate amount of Eligible Receivables included in the Borrowing Base with respect to the Accounts of any Account Debtor and its Affiliates that are Account Debtors would exceed fifteen percent (15%) (or such greater percent in the case of any Account Debtor approved in writing by the Agent) of all Eligible Receivables included in the Borrowing Base before giving effect to this provision, a portion of Eligible Receivables in respect of the Accounts shall be excluded from the Borrowing Base only to the extent necessary for the foregoing thresholds not to be exceeded after giving effect to such exclusion.

“Environmental Action” means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating to any Environmental Law, Environmental Permit or arising from alleged injury or threat of injury to health or safety as it relates to any Hazardous Materials or the environment, including, without limitation, (a) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

“Environmental Law” means any federal, state, provincial, municipal, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health, and safety as it relates to any Hazardous Materials or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

“Environmental Liability” means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense or cost, contingent or otherwise (including any liability for costs of Remedial Actions, or natural resource damages, administrative oversight costs, and indemnities), of or related to the Borrower or any Subsidiary (including any predecessor for whom the Borrower or any Subsidiary bears liability contractually or by operation of law) arising under or relating to any Environmental Law, including those resulting from or based upon (a) any compliance or noncompliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment (including as related to indoor air quality) or (e) any of the foregoing for which liability is assumed or imposed by any contract or agreement.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equipment” has the meaning specified in the UCC.

“Equipment Availability” means the lesser of (a) \$3,750,000 and (b) seventy percent (70%) of the Net Orderly Liquidation Value of the Eligible Equipment as reduced as provided below. Equipment Availability shall be reduced as of the first day of each calendar quarter commencing April 1, 2023 by \$1,000,000. Equipment Availability may be included in the Borrowing Base subject to the satisfaction of the conditions set forth below. Equipment Availability will be included in the Borrowing Base if the Agent has perfected first priority security interests and liens on the Equipment of Borrower and Designated Guarantors in favor of the Agent for the benefit of the Secured Parties (subject only to the Permitted Collateral Liens). In addition, the amount of Equipment Availability may be further permanently reduced to the extent that any appraisal of Equipment conducted by the Agent after the Amendment No. 5 Effective Date would result in a lower amount of Equipment Availability pursuant to the formula used by the Agent to calculate Equipment Availability on the Amendment No. 5 Effective Date, and subject to the sale or other disposition of any Eligible Equipment as permitted hereunder.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“ERISA Affiliate” means any Person that for purposes of Title IV of ERISA is a member of the controlled group of any Loan Party, or under common control with any Loan Party, within the meaning of Section 414 of the Code or Section 4001(b)(1) of ERISA.

“ERISA Event” means (a)(i) the occurrence of a Reportable Event, within the meaning of Section 4043 of ERISA (except as may occur as a result of the transactions contemplated by the KPP Settlement Agreement solely to the extent that they relate to the transactions contemplated by the KPP Settlement Agreement that shall have been consummated within fifteen (15) days of the Initial Closing Date), with respect to any Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC or (ii) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following thirty (30) days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of any Loan Party or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA (except as may occur as a result of the transactions contemplated by the KPP Settlement Agreement solely to the extent that (x) they relate to the transactions contemplated by the KPP Settlement Agreement that shall have been consummated within fifteen (15) days of the Initial Closing Date and (y) the Company and its Subsidiaries shall have no liability pursuant to Section 4062(e) following such consummation); (e) the withdrawal by any Loan Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan; (g) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA); or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 of ERISA.

“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.

“Events of Default” has the meaning specified in Section 6.01.

“Excess Availability” means, at any time, (a) the Line Cap minus (b) the Revolving Credit Facility Usage at such time.

“Excess Usage” has the meaning specified in Section 2.10(c).

“Exchange Act” has the meaning specified in the definition of “Change of Control”.

“Excluded Account” means any and all of the (a) payroll, employee benefits, healthcare, escrow, fiduciary, defeasance, redemption, trust, tax and other similar accounts, (b) “zero balance” accounts from which balances are swept daily to a Concentration Account, (c) other accounts prohibited by applicable law from being pledged to, or having a security interest therein granted to, a third party, and (d) other Deposit Accounts of the Loan Parties (other than Deposit Accounts and other accounts into which customer or other third party payments in respect of the Collateral are scheduled to be or regularly made) with the aggregate balance for all such accounts under this clause (d) of less than \$5,000,000.

“Excluded Subsidiary” means (a) any Immaterial Subsidiary, (b) any direct or indirect domestic Subsidiary of a direct or indirect Foreign Subsidiary, (c) any Captive Insurance Subsidiary, (d) any domestic Subsidiary that has no material assets other than equity interests in one or more CFCs (a “Qualified CFC Holding Company”), (e) any Foreign Subsidiary, (f) any direct or indirect Subsidiary of a CFC or Qualified CFC Holding Company, (g) any Unrestricted Subsidiary, (h) any Subsidiary that is prohibited by applicable law from guaranteeing the Obligations and (i) any other Subsidiary to the extent the Agent and Borrower agree that the provision of a Guaranty by such Subsidiary of the Obligations would result in a material adverse tax consequence; provided, that, notwithstanding the foregoing, any Subsidiary that provides a guarantee in respect of the Term Loan Documents, the Supplemental Letter of Credit Facility Documents or the Convertible Note Documents shall not be an Excluded Subsidiary hereunder.

“Excluded Swap Obligation” with respect to any Loan Party, means each Swap Obligation as to which, and only to the extent that, such Loan Party’s guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Loan Party does not constitute an “eligible contract participant” as defined in the act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Loan Party and all guarantees of Swap Obligations by other Loan Parties) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Loan Party.

“Existing Credit Agreement” has the meaning set forth in the recitals hereto.

“Existing Debt” has the meaning set forth in Section 5.02(d)(ii).

“Extended Maturity Date” means the earliest of: (a) June 12, 2024, (b) the termination of the Supplemental Letter of Credit Facility (or any Permitted Refinancing thereof), (c) the date that is ninety-one (91) days prior to the final maturity date under the Term Loan Agreement (or any Permitted Refinancing thereof), (d) the date that is ninety-one (91) days prior to the final maturity under the Convertible Note Documents (or any Permitted Refinancing thereof), (e) the date that is ninety-one (91) days prior to the date required for the redemption of the Series B Preferred Stock, or (f) the date that is ninety-one (91) days prior to the date required for the redemption of the Series C Preferred Stock.

“Extended Revolving Credit Commitments” means as to any Lender (a) the amount set forth opposite such Lender’s name on Schedule I hereto as such Lender’s “Extended Revolving Credit Commitment” which shall be designated as a Commitment under the Revolving Credit Facility, and shall constitute a Revolving Credit Commitment of such Lender, (b) that is an Assuming Lender, the amount set forth in the applicable Assumption Agreement as an “Extended Revolving Credit Commitment” or (c) if such Lender has entered into an Assignment and Acceptance, the amount set forth for such Lender in the Register maintained by the Agent pursuant to Section 9.08(e), as an “Extended Revolving Credit Commitment”, as such amount may be reduced pursuant to Section 2.05 or increased pursuant to Section 2.21.

“Extending Lenders” means the Lenders with Extended Revolving Credit Commitments.

“Facility” means the Revolving Credit Facility and the Letter of Credit Facility.

“FATCA” means Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that, (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Agent on such day on such transactions as determined by the Agent; provided, further, that in no event shall such rate be less than zero (0.00%).

“Fee Letters” means, collectively, (i) the Fee Letter, dated as of April 28, 2016, among the Company, the Agent and Bank of America, N.A., as an Arranger and (ii) the Supplemental Fee Letter, dated as of April 28, 2016, among the Company, the Agent and Bank of America, N.A., as an Arranger.

“Financial Officer” of any Person (other than a natural person) means the chief financial officer, president, chief executive officer, treasurer or controller or any other officer of such Person designated or authorized by any of the foregoing.

“Fixed Charge Coverage Ratio” means, as determined on the last day of any fiscal quarter, the ratio of (i) Consolidated EBITDA for the most recently completed period of four consecutive fiscal quarters ending on such date minus the aggregate amount of any unfinanced Capital Expenditures paid during such period minus income taxes paid in cash (net of refunds received but not less than zero) during such period to (ii) (A) interest payable on, and amortization of debt discount in respect of, all Debt for Borrowed Money during such period (excluding (1) additional interest in respect of the any debt securities, deferred or amortized financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees and (2) any original issue discount in respect of the Term Loan Debt, the Convertible Note Debt or any other Debt permitted hereunder); plus (B) the aggregate amount of all scheduled principal payments (other than at final maturity); plus (C) the aggregate amount of all cash dividend payments to holders of capital stock (including Disqualified Stock) of the Company (excluding any items eliminated or consolidated) on account of such capital stock; minus (D) interest income for such period, as the case may be, in each case, of the Company and its Restricted Subsidiaries on a Consolidated basis.

“Fixed Charge Coverage Ratio Trigger Event” means the failure of the Borrower to maintain Excess Availability at any time of at least the greater of (a) twelve and one-half percent (12.5%) of the Line Cap and (b) \$11,250,000; provided, that, the occurrence of a Fixed Charge Coverage Ratio Trigger Event shall be deemed continuing until Excess Availability shall have been equal to or greater than the applicable amount set forth above for thirty (30) consecutive days, at which time such Fixed Charge Coverage Ratio Trigger Event shall no longer be deemed continuing.

“Floor” means one-quarter percent (0.25%) per annum.

“Foreign Subsidiary” means any Subsidiary organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia.

“Forward-Looking Information” has the meaning specified in Section 4.01(t).

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“FRBNY” means the Federal Reserve Bank of New York.

“Fund” means any Person (other than an individual) 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.

“GAAP” has the meaning specified in Section 1.03.

“German Security Agreement” means any Collateral Document which is governed by German law.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state, local or other, 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, in each case, with competent jurisdiction over such Person.

“Guaranteed Obligations” has the meaning specified in Section 7.01(a).

“Guarantors” means, collectively (a) each Subsidiary Guarantor, and (b) each Person who now or hereafter guarantees payment or performance of the whole or any part of the Obligations in accordance with Article VII or otherwise and “Guarantor” means any one of them.

“Guaranty” means the guaranty of each Guarantor set forth in Article VII.

“Guaranty Supplement” has the meaning specified in Section 7.05.

“Hazardous Materials” means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

“Hedging Agreement” means any “swap agreement” as defined in Section 101(53B)(A) of the Bankruptcy Code.

“HMRC” means His Majesty’s Revenue & Customs.

“Immaterial Subsidiary” means each Subsidiary designated by the Company to the Agent as an Immaterial Subsidiary on the Closing Date and thereafter, each Subsidiary of Company designated as an “Immaterial Subsidiary” pursuant to a certificate executed and delivered by a Responsible Officer of the Company to the Agent within sixty (60) days after the delivery of annual financial statements pursuant to Section 5.01(h)(ii) (certifying as to each of the items set forth in this definition), but not including the Company, (a) having total assets (as determined in accordance with GAAP) in an amount of seven and one-half (7.5%) percent or less of the Consolidated total assets of the Company and its Subsidiaries shown on such financial statements or (b) contributing seven and one-half (7.5%) percent or less to the Consolidated net sales of the Company and its Subsidiaries for the fiscal year most recently ended; provided, that, the total assets (as so determined) and net sales (as so determined) of all Immaterial Subsidiaries shall not exceed seven and one-half (7.5%) percent of the Consolidated total assets shown on the Consolidated financial statements of Company and its Subsidiaries, or seven and one-half (7.5%) percent of Consolidated net sales of the Company and its Subsidiaries as of the delivery of financial statements pursuant to Section 5.01(h)(ii). In the event that total assets of all Immaterial Subsidiaries exceed seven and one-half (7.5%) percent of Consolidated total assets of Company and its Subsidiaries, or the total contribution to Consolidated net sales of all Immaterial Subsidiaries exceeds seven and one-half (7.5%) percent of net sales for any such fiscal period for which financial statements have been delivered pursuant to Section 5.01(h)(ii), as the case may be, (i) the Company will designate certain Subsidiaries which shall no longer constitute Immaterial Subsidiaries and will no longer be Immaterial Subsidiaries until redesignated by the Company and (ii) to the extent not otherwise excluded as a Loan Party, shall comply with the provisions of Section 5.01(i) of this Agreement as if they were a new Subsidiary.

“Increase Date” has the meaning specified in Section 2.21(a).

“Increasing Lender” has the meaning specified in Section 2.21(c).

“Indemnified Costs” has the meaning specified in Section 8.05(a).

“Indemnified Party” has the meaning specified in Section 9.04(b).

“Initial Closing Date” means September 3, 2013.

“Initial Closing Date Transactions” means, collectively, (a) the satisfaction and termination of the DIP ABL Credit Agreement and DIP Term Loan Credit Agreement and the Liens created in connection therewith (including the Cash Collateralization or backstopping of letters of credit thereunder), (b) the execution, delivery and performance of, the Existing Credit Agreement and the other Loan Documents, (c) the consummation of the other transactions contemplated by the Chapter 11 Plan (except to the extent such transactions are waived in accordance with the terms of the Chapter 11 Plan) and the Confirmation Order and (d) all other related transactions including the payment of fees and expenses in connection therewith, it being understood that as of the Amendment No. 2 Effective Date, the only Initial Closing Date Transaction is the \$14,000,000 reverse earnout payment to be made to account parties in connection with the sale of the Borrower’s DI/PI business.

“Initial Issuing Banks” means each Lender (or an Affiliate thereof) with a Letter of Credit Commitment on the Closing Date.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Intellectual Property” has the meaning specified in Section 4.01(i).

“Intercreditor Agreements” means collectively (a) the Term Loan Intercreditor Agreement, (b) the Supplemental Letter of Credit Facility Intercreditor Agreement, and (c) each other intercreditor agreement executed and delivered by the Agent in connection with the incurrence by the Company of Debt secured by other priority Liens in the Collateral permitted under Section 5.02(a)(ix); as such agreements may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Interest Payment Date” means (a) for each Term SOFR Revolving Loan, the last day of the applicable Interest Period and, if the Interest Period is more than three months, each three-month anniversary of the beginning of the Interest Period; and (b) for all other Loans, the first day of each calendar month.

“Interest Period” has the meaning specified in Section 2.09.

“Inventory” has the meaning specified in the UCC.

“Inventory Value” means with respect to any Inventory of Borrower or any Designated Guarantor at the time of any determination thereof, the standard cost determined on a first in first out basis and carried on the general ledger or inventory system of such Loan Party stated on a basis consistent with its current and historical accounting practices, in Dollars, determined in accordance with the standard cost method of accounting less, without duplication, (a) any markup on Inventory from an Affiliate and (b) in the event variances under the standard cost method are expensed, a Reserve reasonably determined by the Agent as appropriate in order to adjust the standard cost of Eligible Inventory to approximate actual cost.

“Investment” by any Person means any purchase, holding or acquisition (including pursuant to any merger with any other Person that was not a wholly owned Subsidiary prior to such merger) of any equity interests in or evidence of Debt or other securities (including any option, warrant or other right to acquire any of the foregoing) of, the making of or permitting to exist any loans or advances to, the guarantee of any obligations of, or the making of or permitting to exist any investment or any other interest in, any other Person, or any purchase or other acquisition of (in one transaction or a series of related transactions) any assets of any other Person constituting a business unit.

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

“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).

“Issuance” with respect to any Letter of Credit means the issuance, amendment, renewal or extension of such Letter of Credit.

“Issuing Bank” means an Initial Issuing Bank, any Eligible Assignee to which a portion of the Letter of Credit Commitment hereunder has been assigned pursuant to Section 9.08 or any other Lender (or an Affiliate thereof) so long as such Eligible Assignee or Lender (or Affiliate thereof) expressly agrees to perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as an Issuing Bank and notifies the Agent of its Applicable Lending Office (which information shall be recorded by the Agent in the Register), for so long as such Initial Issuing Bank, Eligible Assignee or Lender (or Affiliate thereof), as the case may be, shall have a Letter of Credit Commitment.

“KPP Accounts” means all Accounts owing to Borrower or any Designated Guarantor by KPP Holdco Limited or any of its direct or indirect Subsidiaries.

“KPP Account Eligibility Date” means the earlier of (a) the date that Agent and Borrower agree that KPP Accounts shall not be excluded from the definition of Eligible Receivables solely because they are KPP Accounts or (b) Borrower has certified to Agent for the benefit of Agent and the Secured Parties that the Tolling Agreements (as defined in the Stock and Asset Purchase Agreement) have been terminated (other than pursuant to an event of default thereunder) pursuant to the KPP Settlement Agreement.

“KPP Global Settlement” has the meaning specified in the Chapter 11 Plan.

“KPP Settlement Agreement” means (a) the Stock and Asset Purchase Agreement; (b) the Settlement Agreement, among the Borrower, Kodak Limited, KPP Trustees Limited, Kodak International Finance Limited and Kodak Polychrome Graphics Finance UK Limited, each dated April 26, 2013; and (c) any related contract, agreement, deed and undertaking described in either of the foregoing to the extent entered into in conjunction with the consummation of the transactions and agreements contemplated therein; provided, that, the documents set forth in clauses (a) through (b) may be modified or amended from time to time, which agreements implement the KPP Global Settlement.

“L/C Cash Deposit Account” means an interest bearing cash deposit account to be established and maintained by the Agent, over which the Agent, as provided in Section 6.02, shall have sole dominion and control, upon terms as may be satisfactory to the Agent.

“L/C Related Documents” has the meaning specified in Section 2.06(a).

“Lease” means any agreement pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

“Lender Appointment Period” has the meaning specified in Section 8.07(a).

“Lender Insolvency Event” means that (i) a Lender or its Parent Company is insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (ii) such Lender or its Parent Company is the subject of a bankruptcy, insolvency, reorganization, liquidation, winding up or similar proceeding, or a receiver, interim receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment.

“Lenders” has the meaning in the introductory paragraph hereto, and shall include each Assuming Lender that shall become a party hereto pursuant to Section 2.21, each Issuing Bank and each Person that shall become a party hereto pursuant to Section 9.08.

“Letter of Credit” means any standby letter of credit or commercial letter of credit issued under the Letter of Credit Facility

“Letter of Credit Agreement” has the meaning specified in Section 2.03(a).

“Letter of Credit Commitment” means, with respect to each Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Company and its Subsidiaries in (a) the amount set forth opposite such Issuing Bank’s name on Schedule I hereto under the caption “Letter of Credit Commitment”, which amount shall reduce on and after the Maturity Date, as provided on Schedule I hereto or (b) if such Issuing Bank has entered into one or more Assignment and Acceptances or is a Lender that has become an Issuing Bank after the Closing Date in accordance with the definition of “Issuing Bank”, the amount set forth for such Issuing Bank in the Register maintained by the Agent pursuant to Section 9.08(e) as such Issuing Bank’s “Letter of Credit Commitment”, in each case as such amount may be reduced prior to such time pursuant to Section 2.05, and in any event shall not be more than the amount of the Letter of Credit Facility.

“Letter of Credit Facility” means, at any time, an amount equal to the lesser of (a) \$90,000,000 and (b) the aggregate amount of the Revolving Credit Commitments, as such amount may be reduced at or prior to such time pursuant to Section 2.05 or is reduced after the Maturity Date, by the termination of the Non-Extended Revolving Credit Commitments.

“Letter of Credit Fee Rate” means four percent (4.00%) per annum; provided, that, on and after the first Adjustment Date after the Amendment No. 5 Effective Date, the Letter of Credit Fee Rate will be the rate per annum as determined pursuant to the pricing grid below based upon the average daily Excess Availability for the most recently ended fiscal quarter immediately preceding such Adjustment Date:

Tier	Average Daily Excess Availability	Letter of Credit Fee Rate
I	Greater than 67% of the Revolving Credit Facility	3.50%
II	Equal to or greater than 33% of the Revolving Credit Facility but less than or equal to 67% of the Revolving Credit Facility	3.75%
III	Less than 33% of the Revolving Credit Facility	4.00%

Any change in the Letter of Credit Fee Rate resulting from changes in average daily Excess Availability shall become effective on the Adjustment Date; provided, that, the first Adjustment Date after the Amendment No. 5 Effective Date shall occur on the first day of the calendar month following the second full fiscal quarter after the Amendment No. 5 Effective Date. If the Agent is unable to calculate average daily Excess Availability for a fiscal quarter due to Borrower’s failure to deliver any Borrowing Base Certificate when required hereunder, then, at the option of the Agent or the Required Lenders, the Letter of Credit Fee Rate shall be determined as if Tier III (rather than the Tier applicable for the prior period) were applicable until the first day of the calendar month following the receipt of the applicable Borrowing Base Certificate.

In the event that at any time after the end of a fiscal quarter it is discovered that the average daily Excess Availability for such fiscal quarter used for the determination of the Letter of Credit Fee Rate was less than the actual amount of the average daily Excess Availability for such fiscal quarter used to calculate the Letter of Credit Fee Rate, the Letter of Credit Fee Rate for such prior fiscal quarter shall be adjusted to the applicable percentage based on such actual average daily Excess Availability for such fiscal quarter and any additional commission for the applicable period payable as a result of such recalculation shall be promptly paid to the Lenders.

“Letter of Credit Obligations” means, at any time, the sum of (i) the Available Amount of all Letters of Credit issued and outstanding and, without duplication, (ii) the aggregate amount of all amounts drawn under Letters of Credit that have not been reimbursed by the Company or converted to Revolving Loans.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any lease having substantially the same economic effect as any of the foregoing) relating to such asset; provided, that, in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien; provided, further, that Liens shall not include any license, sublicense, release, immunity or covenant not to sue or with respect to intellectual property (including any Intellectual Property).

“Lien Waiver” means a customary agreement, in form and substance reasonably satisfactory to the Agent, by which (a) for any ABL Priority Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the ABL Priority Collateral, and agrees to permit the Agent to enter upon the premises and remove the ABL Priority Collateral or to use the premises to store or Dispose of the ABL Priority Collateral; (b) for any ABL Priority Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the ABL Priority Collateral, agrees to hold any Documents in its possession relating to the ABL Priority Collateral as agent for the Agent, and agrees to deliver the ABL Priority Collateral to the Agent upon request; (c) for any ABL Priority Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Agent’s Lien, waives or subordinates any Lien it may have on the ABL Priority Collateral, and agrees to deliver the ABL Priority Collateral to the Agent upon request; and (d) for any ABL Priority Collateral subject to a licensor’s Intellectual Property rights, the licensor grants to the Agent the right, vis-à-vis such licensor, to enforce the Agent’s Liens with respect to the ABL Priority Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under the applicable license.

“Line Cap” means, at any time, the lesser of (a) the Borrowing Base and (b) the aggregate Revolving Credit Commitments of all Lenders and after the Maturity Date, the aggregate Extended Revolving Credit Commitments of all Extending Lenders.

“Liquidation” means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable laws as a creditor of the Loan Parties with respect to the realization of the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Agent, of any public, private or other similar sale or other Disposition of the Collateral for the purpose of liquidating the Collateral.

“Loan Documents” means (a) this Agreement, (b) the Notes, (c) Collateral Documents, (d) all Intercreditor Agreements, and (e) each Letter of Credit Agreement, and each other document and instrument delivered in connection herewith on or after the Initial Closing Date, in each case as amended, restated, supplemented or otherwise modified from time to time; provided, that, no Bank Product Agreement is a Loan Document.

“Loan Parties” means Borrower and Guarantors.

“Loan Party Materials” has the meaning specified in Section 5.01(h).

“Loan Value” means, at any time of determination, an amount (calculated based on the most recent Borrowing Base Certificate delivered to the Agent in accordance with this Agreement) equal to (a) with respect to Eligible Receivables of Borrower and Designated Guarantors, eighty-five percent (85%) multiplied by the Value of Eligible Receivables less the applicable Dilution Reserve plus (b) with respect to Eligible Inventory of Borrower and Designated Guarantors, the lesser of (i) seventy-five percent (75%) multiplied by the Value of the Eligible Inventory and (ii) eighty-five percent (85%) of the Net Recovery Percentage (based on the then most recent independent inventory appraisal) on any date of determination, multiplied by the aggregate cost of Eligible Inventory (or such other Value as is used for the purpose of the calculation of the Net Recovery Percentage), plus (c) Equipment Availability.

“Margin Stock” has the meaning specified in Regulation U of the Board of Governors.

“Market Disruption Event” has the meaning specified in Section 2.09(c).

“Material Adverse Effect” means a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance or properties of the Company and its Consolidated Subsidiaries taken as a whole, (b) the rights and remedies of the Agent or any Lender under any Loan Document or (c) the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party.

“Material First-Tier Foreign Subsidiary” means any Foreign Subsidiary or Qualified CFC Holding Company that is owned directly by or on behalf of the Borrower or any Guarantor and is not an Immaterial Subsidiary.

“Material Subsidiary” means any Restricted Subsidiary other than an Immaterial Subsidiary.

“Maturity Date” means the earliest of: (a) February 26, 2024, (b) the termination of the Supplemental Letter of Credit Facility (or any Permitted Refinancing thereof), (c) the date that is ninety-one (91) days prior to the final maturity date under the Term Loan Agreement (or any Permitted Refinancing thereof), (d) the date that is ninety-one (91) days prior to the final maturity under the Convertible Note Documents (or any Permitted Refinancing thereof), (e) the date that is ninety-one (91) days prior to the date required for the redemption of the Series B Preferred Stock, or (f) the date that is ninety-one (91) days prior to the date required for the redemption of the Series C Preferred Stock.

“Maximum Rate” has the meaning specified in Section 2.07(d).

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters for which financial statements have been delivered or are required to be delivered (or, with respect to determinations to be made prior to the delivery of the first set of financial statements, the most recently completed four fiscal quarters ended at least thirty (30) days prior to the Closing Date).

“Minimum Liquidity” means unrestricted cash and Cash Equivalents of the Loan Parties in one or more deposit accounts or securities accounts in the United States, in each case, that is subject to a Control Agreement.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five (5) plan years made or accrued an obligation to make contributions.

“Multiple Employer Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and at least one Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

“Net Cash Proceeds” means, with respect to any event (a) the cash proceeds actually received in respect of such event including (i) any cash received in respect of any non-cash proceeds, but only as and when received, (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, in each case net of (b) the sum of (i) all costs, fees and out-of-pocket fees, commissions, charges and expenses (including fees, costs and expenses related to appraisals, surveys, brokerage, finder, underwriting, arranging, legal, investment banking, placement, printing, auditor, accounting, title, environmental (including remedial expenses), title exceptions and encumbrances, and finder’s fees, success fees or similar fees and commissions) paid or payable by the Borrower and the Restricted Subsidiaries to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a casualty or a condemnation or similar proceeding), the amount of all payments required to be made (or required to be escrowed) by the Borrower and the Restricted Subsidiaries as a result of such event to repay (or establish an escrow, trust, defeasance, discharge or redemption account or similar arrangement for the repayment of) Debt (other than the Obligations) secured by a Lien prior to the Lien of the Collateral Agent on such asset (provided, that, if any amounts in such accounts or subject to such agreements are released to the Borrower and its Restricted Subsidiaries, such amounts shall constitute Net Cash Proceeds upon release), (iii) the amount of all taxes (including transfer tax and recording tax) paid (or reasonably estimated to be payable) by the Borrower and the Restricted Subsidiaries, and the amount of any reserves established by the Borrower and the Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable, and that are directly attributable to such event (as determined reasonably and in good faith by the chief financial officer or other Financial Officer of the Borrower), (iv) in respect of any casualty or condemnation, any amounts paid to the Borrower or any Restricted Subsidiary related to the casualty or condemnation, and (v) all other amounts deposited in trust or escrow or paid for the benefit of any third party or to which any third party may be entitled in connection with such event, provided, that, any such amounts returned to the Borrower or any Restricted Subsidiary shall constitute Net Cash Proceeds when actually received. All amounts received under the KPP Settlement Agreement and the transactions contemplated thereby and in relation thereto shall be deemed not to be Net Cash Proceeds.

“Net Orderly Liquidation Value” means, with respect to Eligible Equipment and Eligible Inventory, as the case may be, the orderly liquidation value with respect to such Equipment or Inventory, net of expenses estimated to be incurred in connection with such liquidation, based on the most recent third-party appraisal by an independent appraisal firm reasonably satisfactory to the Agent (and prior to an Event of Default selected in consultation with the Company).

“Net Recovery Percentage” means the fraction, expressed as a percentage (a) the numerator of which is the amount equal to the expected recovery on the aggregate amount of the applicable category of Eligible Inventory at such time based on the appraised Net Orderly Liquidation Value pursuant to the most recent acceptable appraisal thereof received by the Agent and (b) the denominator of which is the cost of the aggregate amount of the Eligible Inventory (or such other Value as may be used therein for such purpose) subject to such inventory appraisal.

“Non-Consenting Lenders” has the meaning set forth in the introductory paragraphs.

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

“Non-Extended Revolving Credit Commitments” means as to any Lender (a) the amount set forth opposite such Lender’s name on Schedule I hereto as such Lender’s “Non-Extended Revolving Credit Commitment” which shall be designated as a Commitment under the Revolving Credit Facility, and shall constitute a Revolving Credit Commitment of such Lender, (b) that is an Assuming Lender, the amount set forth in the applicable Assumption Agreement as a “Non-Extended Revolving Credit Commitment” or (c) if such Lender has entered into an Assignment and Acceptance, the amount set forth for such Lender in the Register maintained by the Agent pursuant to Section 9.08(e), as a “Non-Extended Revolving Credit Commitment”, as such amount may be reduced pursuant to Section 2.05 or increased pursuant to Section 2.21.

“Non-Extending Lenders” means the Lenders with Revolving Credit Commitments that are not Extended Revolving Credit Commitments.

“Non-Extension Notice Date” has the meaning specified in Section 2.03(a).

“Note” means a promissory note of the Borrower payable to the order of any Lender, delivered pursuant to a request made under Section 2.16 in substantially the form of Exhibit A hereto, or such other form agreed to by the Agent, in each case, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Revolving Loans made by such Lender.

“Notice of Borrowing” has the meaning specified in Section 2.02(a).

“Notice of Conversion/Continuation” means a notice by Borrower for conversion or continuation of a Loan as a Term SOFR Revolving Loan, in form satisfactory to Agent.

“Notice of Issuance” has the meaning specified in Section 2.03(a).

“Obligations” means all liabilities and obligations of every nature of each Loan Party from time to time owed to the Agent, the Lenders, the other Secured Parties or any of them under (a) the Loan Documents, and (b) all Bank Product Obligations, whether for principal, interest (including interest which, but for the filing of a petition or other proceeding in an Insolvency Proceeding with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy or Insolvency Proceeding), fees, expenses, indemnification or otherwise and whether primary, secondary, direct, indirect, contingent, fixed or otherwise; provided, that, Obligations of a Loan Party shall not include its Excluded Swap Obligations.

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

“Other Taxes” has the meaning specified in Section 2.14(b).

“Overadvance” has the meaning set forth in Section 2.01(c).

“Overadvance Loan” means a Base Rate Revolving Loan made when an Overadvance exists or is caused by the funding thereof.

“Parallel Debt” has the meaning specified in Section 8.14(a).

“Parent Company” means, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

“Participant Register” has the meaning specified in Section 9.08(i).

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001.

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

“Pension Agreements” means defined benefit pension plans and defined benefit postretirement plans as defined by Accounting Standards Codification 715, Compensation - Retirement Benefits.

“Permitted Acquisition” means any Acquisition as long as (a) no Default exists or is caused thereby; (b) such acquisition was not preceded by an unsolicited tender offer for such equity interests by, or proxy contest initiated by, the Company or any Subsidiary; (c) the assets, business or Person being acquired are useful or engaged in the business of the Company and Subsidiaries or the acquired entity, line of business or businesses acquired is engaged in a Related Business; (c) no Debt or Liens are assumed or incurred, except for Debt permitted to be incurred pursuant to Section 5.02(d) or Liens permitted pursuant to Section 5.02(a); (d) upon giving pro forma effect thereto, Excess Availability is at least the amount equal to twenty percent (20%) of the Revolving Credit Facility for the thirty (30) days preceding and as of the date of the Acquisition; (e) the Fixed Charge Coverage Ratio determined on a pro forma basis giving effect to the Acquisition, is not less than 1.00 to 1.00; and (f) the Borrower delivers to Agent, at least five (5) Business Days prior to the consummation of such Acquisition, copies of all material agreements relating thereto and a certificate, in form and substance satisfactory to Agent, stating that the Acquisition is a “Permitted Acquisition” and demonstrating compliance with the foregoing requirements. Notwithstanding the foregoing, if, as of the date of any Acquisition, the Excess Availability at any time during the preceding thirty (30) consecutive day period and as of the date of such Acquisition shall have been not less than thirty percent (30%) of the Revolving Credit Facility, and after giving effect to such Acquisition on a pro forma basis using the most recent calculation of the Borrowing Base, as of the date of such Acquisition and at any time during the thirty (30) consecutive day period immediately preceding such Acquisition, the Excess Availability would have been not less than thirty percent (30%) of the Revolving Credit Facility, satisfaction of the Fixed Charge Coverage Ratio test described in subclause (e) shall not be required with respect to such Acquisition.

“Permitted Collateral Liens” has the meaning specified in the definition of “Eligible Equipment”.

“Permitted Discretion” means a determination made in the exercise, in good faith, of reasonable business judgment (from the perspective of a secured, asset-based lender). Prior to the occurrence of any Default, the establishment or increase of any Reserve shall be limited to such Reserves as the Agent may from time to time determine in its Permitted Discretion following consultation with the Company as being appropriate.

"Permitted Holders" means any person or group of persons which includes any of Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, Deseret Mutual Pension Trust, George Karfunkel, Renee Karfunkel, George Karfunkel Family LLC, Congregation Chemdas Yisroel, Chesed Foundation of America, Marneu Holding Company, Moses Marx, Phillippe Katz, K.F. Investors LLC, United Equities Commodities Company, Momar Corporation, 111 John Realty Corporation and any Lender and any Affiliate of any of the foregoing; provided that (a) a group consisting of Permitted Holders may include any person that forms a group with the persons set forth above and (b) after giving effect to the acquisition of Voting Stock by such person, the persons listed above beneficially own in the aggregate, directly or indirectly, a majority of the aggregate ordinary voting power of all persons in such group.

"Permitted Liens" means:

(a) Liens imposed by law for taxes, assessments and governmental charges or claims that are not yet due or that are being contested in good faith by appropriate proceedings, provided, that, adequate reserves with respect thereto are maintained on the books of the Company or its Subsidiaries, as the case may be, in conformity with GAAP;

(b) carriers', landlord's, warehousemen's, mechanics', materialmen's, brokers', suppliers' and repairmen's liens, statutory liens of banks and rights of setoff and other Liens, in each case, imposed by law (other than obligations imposed pursuant to Section 303(k) or 4068 of ERISA or Section 430(k) of the Code), arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.01(b);

(c) pledges or deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, healthcare and other social security laws or regulations;

(d) (i) Liens on cash, pledges and deposits of cash to secure the performance of bids, tenders, trade contracts or leases, (ii) deposits of cash to secure public or statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature or deposits as security for contested taxes or import duties or for the payment of rent, in each case in the ordinary course of business and (iii) utility deposits made in the ordinary course of business;

(e) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 6.01(f);

(f) leases or subleases granted to others in the ordinary course of business, survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, gas lines, water, cable, television, telegraph and telephone lines and other similar purposes, zoning restrictions, or other restrictions as to the use of real properties or Liens incidental, to the conduct of the business or to the ownership of its properties which were not incurred in connection with Debt and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Company or the Restricted Subsidiaries;

(g) encumbrances on assets disposed or to be disposed in a disposition permitted by Section 5.02(e) or created by an agreement(s) providing for such permitted disposition;

(h) any (i) reversionary interest or title of lessor or sublessor under any lease, (ii) Lien, easement, restriction or encumbrance to which the interest or title of such lessor or sublessor may be subject, (iii) subordination of the interest of the lessee or sublessees under such lease to any Lien, restriction or encumbrance referred to in the preceding clause (ii), (iv) lease or sublease of real property granted to others in the ordinary course of business, (v) license, sublicense, release, immunity or covenant not to sue with respect to intellectual property granted to others in the ordinary course of business or in connection with the settlement of any litigation, threatened litigation or other dispute, or (vi) license, sublicense, release, immunity or covenant not to sue encumbering intellectual property acquired by any Loan Party;

(i) Liens arising from filing UCC financing statements for "informational purposes only" relating solely to the leased asset or consignments or operating leases entered into by any Loan Party in the ordinary course of business; and

(j) Environmental and zoning laws, ordinances and regulations, now or hereafter in effect relating to real property and the ownership, use, development of and the right to operate or maintain such property.

"Permitted Receivables Documents" means all documents and agreements evidencing, relating to or otherwise governing a Permitted Receivables Financing.

"Permitted Receivables Financing" means one or more transactions by any Foreign Subsidiary pursuant to which such Foreign Subsidiary may sell, convey or otherwise transfer to one or more Special Purpose Receivables Subsidiaries or to any other person, or may grant a security interest in, any Receivables Assets (whether now existing or arising in the future) of such Foreign Subsidiary, and any assets related thereto including all contracts and all guarantees or other obligations in respect of such Receivables Assets, the proceeds of such Receivables Assets and other assets which are customarily transferred, or in respect of which security interests are customarily granted, in connection with sales, factoring or securitizations involving Receivables Assets; provided, that, (a) recourse to the Foreign Subsidiaries (other than the Special Purpose Receivables Subsidiary) in connection with such transactions shall be limited to the extent customary for similar transactions in the applicable jurisdictions (including, to the extent applicable, in a manner consistent with the delivery of a "true sale"/"absolute transfer" opinion with respect to any transfer by any Foreign Subsidiary (other than a Special Purpose Receivables Subsidiary)) and (b) the aggregate Receivables Net Investment shall not exceed \$25,000,000 at any time.

"Permitted Refinancing" means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement, exchange or extension of any Debt of such Person; provided, that, (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Debt so modified, refinanced, refunded, renewed, replaced, exchanged or extended except by an amount equal to accrued and unpaid interest and a reasonable premium thereon plus other reasonable and customary amounts paid, and customary fees and expenses reasonably incurred (including underwriting, arrangement or placement fees, discounts and commissions), in connection with such modification, refinancing, refunding, renewal, replacement, exchange or extension and by an amount equal to any existing commitments unutilized thereunder; (b) such modification, refinancing, refunding, renewal, replacement, exchange or extension (i) has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended and (ii) has no scheduled amortization or payments of principal prior to ninety-one (91) days after the Extended Maturity Date or, if the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended is subject to scheduled amortization or payments of principal, prior to any such currently scheduled amortization or payments of principal; (c) if the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement, exchange or extension is subordinated in right of payment to the Obligations on terms as favorable in all material respects to the Lenders as those contained in the documentation governing the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended; (d) the terms and conditions (including, if applicable, as to collateral) of any such modified, refinanced, refunded, renewed, replaced, exchanged or extended Debt are, either (i) customary for similar debt securities or bank financings in light of then-prevailing market conditions (it being understood that such Debt shall not include any financial maintenance covenants unless such financial covenant is added to this Agreement for the benefit of Lenders or does not take effect until after the Extended Maturity Date and that any negative covenants shall be incurrence-based) or (ii) not materially less favorable to the Loan Parties or the Lenders, taken as a whole, than the terms and conditions of the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended (provided, that, a certificate of a Responsible Officer of the Company delivered to the Agent in good faith at least five (5) Business Days prior to the incurrence of such Debt, together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that the Company has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (d), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Agent provides notice to the Company of its objection during such five (5) Business Day period); (e) any such modification, refinancing, refunding, renewal, replacement, exchange or extension is incurred by the Person who is the obligor or guarantor, or a successor to the obligor or guarantor, on the Debt being modified, refinanced, refunded, renewed, replaced or extended unless otherwise permitted hereunder; (f) any such modification, refinancing, refunding, renewal, replacement, exchange or extension of the Term Loan Agreement shall be subject to (and the holders of, and agents and/or trustees in respect of, any such Debt shall be bound by) the Term Loan Intercreditor Agreement; (g) any such modification, refinancing, refunding, renewal, replacement, exchange or extension of the Supplemental Letter of Credit Facility Agreement shall be subject to (and the holders of, and agents and/or trustees in respect of, any such Debt shall be bound by) the Supplemental Letter of Credit Facility Intercreditor Agreement; and (h) at the time of entry into such Agreement, no Event of Default shall have occurred and be continuing.

"Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited or unlimited liability company or other entity, or a government or any political subdivision or agency thereof.

"Plan" means a Single Employer Plan or a Multiple Employer Plan.

"Platform" has the meaning specified in Section 5.01(h).

"Post-Petition Interest" has the meaning specified in Section 7.06(b).

"Potential Defaulting Lender" means, at any time, a Lender (i) as to which the Agent has notified the Company that an event of the kind referred to in the definition of "Lender Insolvency Event" has occurred and is continuing in respect of any financial institution affiliate of such Lender, (ii) as to which the Agent or the Issuing Banks have in good faith reasonably determined and notified the Company that such Lender or its Parent Company or a financial institution affiliate thereof has notified the Agent, or has stated publicly, that it will not comply with its funding obligations under any other loan agreement or credit agreement or other similar/other financing agreement or (iii) that has, or whose Parent Company has, a rating for any class of its long-term senior unsecured debt lower than BBB- by S&P and Baa3 by Moody's. Any determination that a Lender is a Potential Defaulting Lender under any of clauses (i) through (iii) above will be made by the Agent or, in the case of clause (ii), the Issuing Banks, as the case may be, in their sole discretion acting in good faith and upon consultation with the Company. The Agent will promptly send to all parties hereto a copy of any notice to the Company provided for in this definition.

“Primary Currency” has the meaning specified in Section 9.17(b).

“Projections” has the meaning specified in Section 5.01(h)(viii).

“Protective Revolving Loan” has the meaning specified in Section 2.01(d).

“Public Lender” has the meaning specified in Section 5.01(h).

“Purchasers” has the meaning specified in the definition of “Series A Preferred Stock Issuance.”

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

“QFC Credit Support” has the meaning specified therefor in Section 9.22 of this Agreement.

“Qualified ECP” means a Loan Party with total assets exceeding \$10,000,000, or that constitutes an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” under Section 1a(18)(A)(v)(II) of such act.

“Ratable Share” of any amount means, (a) on and prior to the Maturity Date, with respect to any Lender at any time, the product of such amount times a fraction the numerator of which is the amount of such Lender’s Revolving Credit Commitment at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or 6.01, such Lender’s Revolving Credit Commitment as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of all Revolving Credit Commitments, and (b) after the Maturity Date, with respect to any Lender at any time, the product of such amount times a fraction the numerator of which is the amount of such Lender’s Extended Revolving Credit Commitment at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or 6.01, the aggregate amount of all Extended Revolving Credit Commitments as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of all Extended Revolving Credit Commitments.

“Real Estate” means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all Leases, tenancies, and occupancies thereof.

“Receivables Assets” means accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Company or any Subsidiary.

“Receivables Net Investment” means the aggregate cash amount paid by the lenders or purchasers under any Permitted Receivables Financing in connection with their purchase of, or the making of loans secured by, Receivables Assets or interests therein, as the same may be reduced from time to time by collections with respect to such Receivables Assets or otherwise in accordance with the terms of the Permitted Receivables Documents; provided, however, that, if all or any part of such Receivables Net Investment shall have been reduced by application of any distribution and thereafter such distribution is rescinded or must otherwise be returned for any reason, such Receivables Net Investment shall be increased by the amount of such distribution, all as though such distribution had not been made.

“Received Amount” has the meaning specified in Section 8.14(d).

“Register” has the meaning specified in Section 9.08(e).

“Related Business” means any business which is the same as or related, ancillary or complementary to, or a reasonable extension or expansion of, any of the businesses of the Company and its Restricted Subsidiaries on the Closing Date.

“Related Parties” means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, trustees, partners and advisors of such Person and such Person's Affiliates.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including the migration of any Hazardous Material through the air, soil, surface water or groundwater.

“Remedial Action” means (a) all actions taken under any Environmental Law to (i) clean up, remove, remediate, contain, treat, monitor, assess or evaluate Hazardous Materials present in, or threatened to be Released into, the environment, (ii) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities or (b) any response actions authorized by 42 U.S.C. 9601 et seq. or analogous state law.

“Rent and Charges Reserve” means reserves in such amounts as the Agent, may elect to impose in its Permitted Discretion from time to time in respect of all past due rent and other amounts owing by any Loan Party to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who (a) possesses any ABL Priority Collateral or (b) could assert a Lien on any ABL Priority Collateral; provided, that, with respect to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any ABL Priority Collateral or could assert a Lien on any ABL Priority Collateral, a reserve equal to three (3) months' rent at such location and such other reserve amounts that may be determined by the Agent in its Permitted Discretion.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan, other than (a) those events as to which notice is waived pursuant to 29 C.F.R. Section 4043 as in effect on the date hereof (no matter how such notice requirement may be changed in the future) or (b) except as may occur as a result of the transactions contemplated by the KPP Settlement Agreement so long as the Borrower and its Subsidiaries have no liability with respect thereto and only with respect to the portion of the transactions contemplated by the KPP Settlement Agreement that have not been consummated as of the Initial Closing Date.

“Required Lenders” means at any time Lenders owed at least a majority in interest of the sum of (a) the then aggregate unpaid principal amount of the Revolving Loans outstanding at such time, (b) the aggregate Unused Revolving Credit Commitments at such time and (c) the aggregate Letter of Credit Obligations at such time (with the aggregate amount of each Lender's risk participation and funded participation in Letter of Credit Obligations being deemed held by such Lender for purposes of this definition); provided, that, (i) if any Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Required Lenders at such time (for the avoidance of doubt such exclusion shall apply to both the numerator and denominator (A) the aggregate principal amount of the Revolving Loans owing to such Lender (in its capacity as a Lender) and outstanding at such time, (B) the Unused Revolving Credit Commitment of such Lender at such time and (C) the Letter of Credit Obligations held or deemed held by such Lender at such time and (ii) at any time there are two or more Lenders (who are not Affiliates of one another or Defaulting Lenders), “Required Lenders” must include at least two Lenders (who are not Affiliates of one another).

“Reserves” means, at any time of determination and without duplication, the sum of (a) any Rent and Charges Reserves, (b) the Bank Product Reserve, in effect from time to time, (c) a reserve established from time to time by Agent in its Permitted Discretion following consultation with the Company to reflect the additional costs (including labor and overhead) in connection with the conversion of WIP to finished goods, as determined by Agent in good faith, and (d) such additional reserves, in such amounts and with respect to such matters, as the Agent in its Permitted Discretion may elect to impose from time to time.

“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, general counsel, executive vice president, secretary, assistant secretary, treasurer, assistant treasurer or controller (or any affiliate or subsidiary party the foregoing) of a Loan Party. Any document delivered hereunder or under any other Loan Document 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” has the meaning specified in Section 5.02(h).

“Restricted Subsidiary” means each Subsidiary of Loan Parties that is not an Unrestricted Subsidiary.

“Revolving Credit Commitment” means as to any Lender, on and prior to the Maturity Date, the Non-Extended Revolving Credit Commitments in the case of the Non-Extending Lenders and the Extended Revolving Credit Commitments in the case of the Extending Lenders, and after the Maturity Date, the Extended Revolving Credit Commitments of the Extending Lenders. The aggregate amount of the Revolving Credit Commitments as of the Amendment No. 5 Effective Date is \$90,000,000 and after the Maturity Date, shall be \$81,000,000.

“Revolving Credit Facility” means, at any time, the aggregate amount of the Lenders’ Revolving Credit Commitments at such time.

“Revolving Credit Facility Usage” means at any time, the amount obtained by adding (i) the aggregate outstanding principal amount of all Revolving Loans and (ii) the aggregate outstanding Letter of Credit Obligations.

“Revolving Loan” means a loan made by a Lender as part of a Borrowing and refers to a Base Rate Revolving Loan or a Term SOFR Revolving Loan and shall be deemed to include any Swingline Loan, any Overadvance Loan and any Protective Revolving Loan made hereunder.

“S&P” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc.

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

“Scheduled Unavailability Date” has the meaning specified in Section 2.26.

“Secured Parties” means, collectively, the Agent, each Lender, each Issuing Bank and each Bank Product Provider (but in the case of each Bank Product Provider only so long as such Bank Product Provider (or its Affiliate, as the case may be) is a Lender hereunder).

“Secured Debt” means, without duplication, the aggregate principal amount of Debt for Borrowed Money secured by a Lien on assets of the Company and its Restricted Subsidiaries determined on a Consolidated basis.

“Secured Leverage Ratio” means, on any date, the ratio of (a) Secured Debt on such date less the domestic cash and Cash Equivalents of the Loan Parties (excluding cash and Cash Equivalents securing letters of credit, except to the extent such letters of credit constitute Secured Debt under the Supplemental Letter of Credit Facility) on such date, in each case free and clear of all Liens other than any Liens permitted pursuant to Section 5.02(a)(ii) and Section 5.02(a)(xii) to (b) Consolidated EBITDA during the most recently completed Measurement Period.

“Secured Obligations” means the “Secured Obligations”, as defined in the Security Agreement.

“Security Agreement” means the Amended and Restated Security Agreement, dated as of the Closing Date, made by Borrower and each Guarantor in favor of Agent for the benefit of the Secured Parties, as such agreement may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Series A Preferred Certificate of Designations” means the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Borrower setting forth the terms of the Series A Preferred Stock to be delivered to the Agent upon execution thereof in the form provided to the Agent and the Lenders on the date of Amendment No. 1 (for the avoidance of doubt, without giving effect to any subsequent amendments, supplements or other modifications).

“Series A Preferred Stock” has the meaning specified in the definition of “Series A Preferred Stock Issuance.”

“Series A Preferred Stock Issuance” means the issuance of the Borrower’s 5.50% Series A Convertible Preferred Stock, no par value (the “Series A Preferred Stock”), to Southeastern Asset Management, Inc. and certain other investors (collectively, the “Purchasers”) on or prior to the Amendment No. 1 Effective Date in a private placement exempt from registration under the Securities Act of 1933, as amended; provided that (a) the Series A Preferred Stock shall (i) have a liquidation preference of \$100 per share and (ii) be convertible into shares of the Borrower’s common stock, par value \$0.01 per share, at the option of the Purchaser or upon the occurrence of certain events set forth in the Series A Preferred Certificate of Designations, (b) the aggregate liquidation preference of such Series A Preferred Stock shall not exceed \$210,000,000, (c) cash dividends paid on such Series A Preferred Stock shall not exceed the amount set forth in the Series A Preferred Certificate of Designations and (d) all other terms of the Series A Preferred Stock and the Series A Preferred Stock Issuance shall be as set forth in the Series A Preferred Certificate of Designations.

“Series B Preferred Stock” has the meaning specified in the definition of “Series B Preferred Stock Issuance.”

“Series B Preferred Stock Issuance” means the issuance of the Borrower’s 4.00% Series B Convertible Preferred Stock, no par value (the “Series B Preferred Stock”), on or prior to the Amendment No. 4 Effective Date in a private placement exempt from registration under the Securities Act of 1933, as amended.

“Series C Preferred Stock” has the meaning specified in the definition of “Series C Preferred Stock Issuance.”

“Series C Preferred Stock Issuance” means the issuance of the Borrower’s 5.00% Series C Convertible Preferred Stock, no par value (the “Series C Preferred Stock”), within forty-five (45) days after the Amendment No. 4 Effective Date (or such later date as Agent may agree) in a private placement exempt from registration under the Securities Act of 1933, as amended.

“Single Employer Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and no Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

“SOFR” means the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Adjustment” means, (a) with respect to Daily Simple SOFR, 0.10% and (b) with respect to Term SOFR, 0.10% for a one (1) month Interest Period, 0.15% for a three (3) month Interest Period and 0.25% for a six (6) month Interest Period.

“Solvent” means, with respect to any Person on a particular date, that on such date (a) the sum of the debt and liabilities (including subordinated and contingent liabilities) of such Person and its Subsidiaries, taken as a whole, does not exceed the fair value of the present assets of such Person and its Subsidiaries, taken as a whole; (b) the present fair saleable value of the assets of such Person and its Subsidiaries, taken as a whole, is greater than the total amount that will be required to pay the probable debt and liabilities (including subordinated and contingent liabilities) of such Person and its Subsidiaries as they become absolute and matured; (c) the capital of such Person and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of such Person or its Subsidiaries, taken as a whole, contemplated as of the date hereof and as proposed to be conducted following the Closing Date; and (d) such Person and its Subsidiaries, taken as a whole, have not incurred, or believe that they will incur, debts or other liabilities including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“Special Purpose Receivables Subsidiary” means a subsidiary of the Company established in connection with a Permitted Receivables Financing for the acquisition of Receivables Assets or interests therein, and which is organized in a manner intended to reduce the likelihood that it would be substantively consolidated with the Company or any of the Subsidiaries (other than Special Purpose Receivables Subsidiaries) in the event the Company or any such Subsidiary becomes subject to a proceeding under the U.S. Bankruptcy Code or a similar foreign debtor relief law.

“Specified Collateral” has the meaning specified in the Security Agreement.

“Specified Loan Party” means a Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 7.08).

“Specified Transaction” means (a) any incurrence or repayment of Debt (other than for working capital purposes) or Investment that results in a Person becoming a Subsidiary, (b) any Permitted Acquisition, (c) any Disposition that results in a Subsidiary ceasing to be a Subsidiary of the Company, (d) any Disposition having an aggregate consideration in excess of \$5,000,000 (other than Dispositions in the ordinary course of business), (e) any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or any Disposition of a business unit, line of business or division of the Company or a Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise or (f) any designation of any Restricted Subsidiary as an Unrestricted Subsidiary, or of any Unrestricted Subsidiary as a Restricted Subsidiary, in each case in accordance herewith.

“Stock and Asset Purchase Agreement” means the Amended and Restated Stock and Asset Purchase Agreement, dated August 31, 2013, among the Borrower, Qualex Inc., Kodak (Near East) Inc., as sellers and KPP Trustees Limited.

“Subordinated Obligations” has the meaning specified in Section 7.06.

“Subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held. Unless otherwise specified, “Subsidiary” shall mean a Subsidiary of the Company. A “Subsidiary” shall not include any variable interest entity.

“Subsidiary Guarantor” means the direct and indirect wholly-owned (other than directors’ qualifying shares or similar holdings under applicable law) Subsidiaries of the Company organized under the laws of a state of the United States of America as listed on Part A of Schedule II hereto (other than Excluded Subsidiaries) and each other Subsidiary of the Company that shall be required to execute and deliver a guaranty pursuant to Section 5.01(i).

“Subsidiary Redesignation” has the meaning specified in the definition of “Unrestricted Subsidiary”.

“Supermajority Lenders” means, at any time, Lenders owed or holding at least seventy-five percent (75%) in interest of the sum of (a) the aggregate principal amount of the Revolving Loans outstanding at such time, (b) the aggregate Unused Revolving Credit Commitment at such time and (c) the aggregate Letter of Credit Obligations at such time (with the aggregate amount of each Lender’s risk participation and funded participation in Letter of Credit Obligations being deemed held by such Lender for purposes of this definition); provided, however, that if any Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Supermajority Lenders at such time (for the avoidance of doubt such exclusion shall apply to both the numerator and denominator) (A) the aggregate principal amount of the Revolving Loans owing to such Lender (in its capacity as a Lender) and outstanding at such time, (B) the Unused Revolving Credit Commitment of such Lender at such time and (C) the Letter of Credit Obligations held or deemed held by such Lender at such time.

“Supplemental Letter of Credit Facility Agent” means Bank of America, National Association in its capacity as administrative agent pursuant to the Supplemental Letter of Credit Facility Documents, and its successors, assigns or any replacement agent appointed pursuant to the terms of the Supplemental Letter of Credit Facility Agreement.

“Supplemental Letter of Credit Facility Agreement” means (i) the Letter of Credit Facility Agreement, dated as of the Amendment No. 4 Effective Date, among the Company, as borrower, the lenders from time to time parties thereto, and Supplemental Letter of Credit Facility Agent, as it may be amended, restated, refinanced, replaced or otherwise modified from time to time and (ii) any other replacement, refinancing, restructuring, extension, renewal or refinancing thereof (in each case whether through one or more credit facilities or other debt issuances pursuant to the agreement set forth in subclause (i) or any other agreement, contract or indenture, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof) to the extent permitted by this Agreement and the Supplemental Letter of Credit Facility Intercreditor Agreement.

“Supplemental Letter of Credit Facility Debt” means the Debt of the Company and its Subsidiaries under the Supplemental Letter of Credit Facility Agreement.

“Supplemental Letter of Credit Facility Documents” means the Supplemental Letter of Credit Facility Agreement, each letter of credit issued in connection therewith and each other agreement, certificate, document, or instrument executed or delivered by the Company or its Subsidiaries to the Supplemental Letter of Credit Facility Agent or any lender thereunder in connection therewith, whether prior to, on, or after the closing of the Supplemental Letter of Credit Facility Agreement, and any and all renewals, extensions, amendments, modifications, refinancings or restatements of any of the foregoing.

“Supplemental Letter of Credit Facility Intercreditor Agreement” means the Intercreditor Agreement, dated as of the Amendment No. 4 Effective Date, among the Agent, as ABL Agent, Supplemental Letter of Credit Facility Agent, as LC Agent, the Company and Guarantors, as the same may from time to time be amended, amended and restated, modified, or replaced.

“Supported QFC” has the meaning specified therefor in Section 9.22 of this Agreement.

“Swap Obligations” means with respect to a Loan Party, its obligations under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swingline Loan” means any Borrowing of a Base Rate Revolving Loan funded with the Agent’s funds, until such Borrowing is settled among Lenders or repaid by Borrower.

“Swingline Loan Notice” has the meaning specified in Section 2.22(a).

“Taxes” has the meaning specified in Section 2.14(a).

“Termination Date” means the earlier of (a) in the case of the Non-Extended Revolving Credit Commitments, the Maturity Date, and in the case of the Extended Revolving Credit Commitments, the Extended Maturity Date, or (b) the date of termination in whole of the Revolving Credit Commitments pursuant to Section 2.05, 6.01 or 9.16(b).

“Term Loan Agent” means Alter Domus (US) LLC in its capacity as administrative agent pursuant to the Term Loan Documents, and its successors, assigns or any replacement agent appointed pursuant to the terms of the Term Loan Agreement.

“Term Loan Agreement” means (a) the Credit Agreement, dated as of the Amendment No. 4 Effective Date, among the Company, as borrower, the lenders from time to time parties thereto, and Term Loan Agent, as it may be amended, restated, refinanced, replaced or otherwise modified from time to time and (b) any other replacement, refinancing, restructuring, extension, renewal or refinancing thereof (in each case whether through one or more credit facilities or other debt issuances pursuant to the agreement set forth in subclause (a) or any other agreement, contract or indenture, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof) to the extent permitted by this Agreement and the Term Loan Intercreditor Agreement.

“Term Loan Debt” means the Debt of the Company and its Subsidiaries under the Term Loan Agreement.

“Term Loan Documents” means the Term Loan Agreement, and each other agreement, certificate, document, or instrument executed or delivered by the Company or its Subsidiaries to the Term Loan Agent or any lender thereunder in connection therewith, whether prior to, on, or after the closing of the Term Loan Agreement, and any and all renewals, extensions, amendments, modifications, refinancings or restatements of any of the foregoing.

“Term Loan Intercreditor Agreement” means the Intercreditor Agreement, dated as of the Amendment No. 4 Effective Date, among the Agent, as ABL Agent, Supplemental Letter of Credit Facility Agent, as LC Agent, Term Loan Agent, as Term Loan Agent, the Company and Guarantors, as the same may from time to time be amended, amended and restated, modified, or replaced.

“Term Loan Priority Collateral” has the meaning set forth in the Term Loan Intercreditor Agreement.

“Term SOFR” means, for any Interest Period relating to a Term SOFR Revolving Loan, the greater of (a) a per annum rate equal to (i) the Term SOFR Screen Rate two (2) U.S. Government Securities Business Days prior to such Interest Period, with a term equivalent to such Interest Period (or if such rate is not published prior to 11:00 a.m. on the determination date, the applicable Term SOFR Screen Rate on the U.S. Government Securities Business Day immediately preceding such date), plus (ii) the SOFR Adjustment for such Interest Period or (b) the Floor.

“Term SOFR Replacement Date” has the meaning specified in Section 2.26.

“Term SOFR Revolving Loan” means a Revolving Loan that bears interest based on Term SOFR.

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

“TMM Assets” has the meaning set forth in the Stock and Asset Purchase Agreement.

“Total Assets” means, as of any date of determination, the aggregate amount of assets reflected on the consolidated balance sheet of the Company and its Restricted Subsidiaries most recently delivered by the Company pursuant to Section 5.01 on or prior to such date of determination.

“Total Leverage Ratio” means, at any date, the ratio of (a) the aggregate principal amount of Debt for Borrowed Money of the Borrower and its Restricted Subsidiaries at such date less the domestic cash and Cash Equivalents of the Loan Parties (excluding cash and Cash Equivalents securing letters of credit referred to in Section 5.02(d)(xxviii)) at such date, in each case free and clear of all Liens other than any Liens permitted pursuant to Section 5.02(a) to (b) Consolidated EBITDA during the most recently completed Measurement Period.

“Type” refers to the distinction between Revolving Loans bearing interest based on the Base Rate and Revolving Loans bearing interest based on Term SOFR.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided, that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“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 falling within 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.

“UK Pension Scheme” means the retirement benefits scheme known as the Kodak Pension Plan.

“UK Pensions Regulator” means the Pensions Regulator established in the United Kingdom pursuant to the Pensions Act of 2004.

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

“Unissued Letter of Credit Commitment” means, with respect to any Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Company or its Subsidiaries in an amount equal to the excess of (a) the amount of its Letter of Credit Commitment over (b) the aggregate Letter of Credit Obligations outstanding to such Issuing Bank.

“United States” and “US” mean the United States of America.

“Unrestricted Subsidiary” means (a) any Subsidiary of the Company designated by the Company as an “Unrestricted Subsidiary” as listed on Schedule 1.01(u), (b) any Subsidiary of the Company designated by the Company as an Unrestricted Subsidiary hereunder by written notice to the Agent and (c) any Subsidiary of an Unrestricted Subsidiary; provided, that, in each case, as to clause (a) and (b), the Company shall only be permitted to so designate a Subsidiary as an Unrestricted Subsidiary so long as each of the following conditions is satisfied: (i) as of the date of the designation thereof and after giving effect thereto, no Default exists or has occurred and is continuing, (ii) immediately after giving effect to such designation, upon giving pro forma effect to such designation, Excess Availability shall be at least the amount equal to twenty percent (20%) of the Revolving Credit Facility for the thirty (30) days preceding and as of the date of designation, (iii) the Fixed Charge Coverage Ratio for the immediately preceding twelve (12) month period, determined on a pro forma basis giving effect to the designation, is not less than 1.00 to 1.00, (iv) such Unrestricted Subsidiary shall be capitalized (to the extent capitalized by Company or any of its Restricted Subsidiaries) through Investments as permitted by, and in compliance with, Section 5.02(i), such that the equity interests in such Subsidiary as of the date of, and after giving effect to, it becoming an Unrestricted Subsidiary shall be an Investment deemed made on such date to a Person that is not a Subsidiary of Company, and any Debt of such Subsidiary owing to any Loan Party or Restricted Subsidiary as of the date of, and after giving effect to, it becoming an Unrestricted Subsidiary shall be an investment deemed made on such date to a Person that is not a Subsidiary of the Company, (v) without duplication of clause (iv), the value of and investments in such Subsidiary will constitute Investments, (vi) such Subsidiary shall have been or will promptly be designated an “Unrestricted Subsidiary” (or otherwise not be subject to the covenants) under the Term Loan Agreement, Supplemental Letter of Credit Facility Loan Agreement and Permitted Refinancing of the Term Loan Debt and Supplemental Letter of Credit Facility Debt, if applicable, and shall not be designated a Restricted Subsidiary for purposes of such Debt, (vii) such Subsidiary shall not have as of the date of the designation thereof or at any time thereafter, create, incur, issue, assume, guarantee or otherwise become directly liable with respect to any Debt pursuant to which the lender, or other party to whom such Debt is owing, has recourse to any Loan Party or any Restricted Subsidiary or their assets unless otherwise permitted hereunder with respect to a third party, (viii) (A) such Subsidiary shall have total assets (as determined in accordance with GAAP) in an amount of less than seven and one half percent (7.5%) of the Consolidated total assets of Company and its Subsidiaries as of the last day of the fiscal year most recently ended as set forth in the financial statements delivered pursuant to Section 5.01(h)(ii), and (B) such Subsidiary contributed less than seven and one-half percent (7.5%) to the Consolidated net sales of the Company and its Subsidiaries for the fiscal year most recently ended as set forth in the financial statements delivered pursuant to Section 5.01(h)(ii); provided, that, the total assets (as so determined) and net sales (as so determined) of all Unrestricted Subsidiaries shall not exceed seven and one-half percent (7.5%) of the Consolidated total assets shown on the Consolidated financial statements of Company and its Subsidiaries, or seven and one-half percent (7.5%) of Consolidated net sales of the Company and its Subsidiaries for any twelve (12) consecutive fiscal month period, as the case may be, and (ix) the Agent shall have received an officer’s certificate executed by a Responsible Officer of the Company, certifying compliance with the requirements of preceding clauses (i) through (viii), and containing the calculations and information required by the preceding clause (ii). In the event that total assets of all Unrestricted Subsidiaries exceed seven and one-half percent (7.5%) of the Consolidated total assets of the Company and its Subsidiaries, or the total contribution to Consolidated net sales of all Unrestricted Subsidiaries exceeds seven and one-half percent (7.5%) of net sales for any such fiscal period for which financial statements have been delivered pursuant to the terms of the Agreement, as the case may be (provided, that, the first two and one-half percent of such thresholds do not count against the calculation of total assets and total net sales for purposes of satisfying the requirements and thresholds for Immaterial Subsidiaries), the Company will designate Subsidiaries which shall no longer constitute Unrestricted Subsidiaries in order to comply with such seven and one half percent (7.5%) thresholds. The Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary for purposes of this Agreement (each, a “Subsidiary Redesignation”); provided, that, (1) as of the date thereof, and after giving effect thereto, no Default or Event of Default exists or has occurred and is continuing, (2) immediately after giving effect to such Subsidiary Redesignation, the Loan Parties shall be in compliance, on a pro forma basis, with the conditions set forth in clause (iii) above, (3) designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Debt or Liens of such Subsidiary existing at such time, and (4) the Agent shall have received an officer’s certificate executed by a Responsible Officer of the Company, certifying compliance with the requirements of preceding clauses (1) and (2), and containing the calculations and information required by the preceding clause (2).

“Unused Revolving Credit Commitment” means, with respect to each Lender at any time, (a) such Lender’s Revolving Credit Commitment in effect at such time minus (b) the sum of (i) the aggregate principal amount of all Revolving Loans made by such Lender (in its capacity as a Lender) and outstanding at such time, plus (ii) such Lender’s Ratable Share of (A) the aggregate Available Amount of all Letters of Credit outstanding at such time, (B) the aggregate principal amount of all Revolving Loans made by each Issuing Bank pursuant to Section 2.03(c) that have not been ratably funded by such Lender and outstanding at such time and (C) any outstanding Swingline Loans.

“US Cash” means, at any time, the amount of cash and Cash Equivalents of the Loan Parties which (a) is maintained in an account located in the United States, subject to the Agent’s first priority perfected security interest pursuant to an account control agreement satisfactory to the Agent, (b) is available for use by a Loan Party, without condition or restriction and (c) is free and clear of any pledge, security interest, lien, claim or other encumbrance (other than in favor of the Agent on behalf of the Secured Parties, the Term Loan Agent on behalf of the holders of the Term Loan Debt pursuant to the Term Loan Documents, and other than in favor of the securities intermediary with which such cash is maintained for its customary fees and charges).

“U.S. Government Securities Business Day” means any Business Day, except any day on which the Securities Industry and Financial Markets Association, New York Stock Exchange or FRBNY is not open for business because the day is a legal holiday under New York law or U.S. federal law.

“U.S. Special Resolution Regimes” has the meaning specified therefor in Section 9.22 of this Agreement.

“Value” means (a) for Inventory, its value determined on the basis of the lower of cost or market, calculated on a first-in, first-out basis, and excluding any portion of cost attributable to intercompany profit among the Loan Parties and their Affiliates; and (b) for an Account, its face amount, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person.

“Voting Stock” means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right to vote has been suspended by the happening of such a contingency.

“Weighted Average Life to Maturity” means, when applied to any Debt at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Debt.

“Withdrawal Liability” has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

“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.

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America (“GAAP”). If at any time any change in GAAP or the application thereof would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or the application thereof (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 or the application thereof prior to such change therein and (b) the Borrower shall provide to the Agent 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 or the application thereof. All terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification having a similar result or effect) to value any Debt or other liabilities of the Company or any Subsidiary at “fair value”, as defined therein and (ii) any treatment of Debt in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification having a similar result or effect) to value any such Debt in a reduced or bifurcated manner as described therein, and such Debt shall at all times be valued at the full stated principal amount thereof).

SECTION 1.04. Reserves. Reserves may be established by Agent or Agent may change the amount, percentage, reserve, eligibility criteria or other item in the definitions of the terms “Borrowing Base”, “Eligible Inventory”, “Eligible Receivables”, “Eligible Equipment” and “Rent and Charges Reserve” in each case in the Agent’s Permitted Discretion.

SECTION 1.05. Letter of Credit Amount. 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, that, with respect to any Letter of Credit that, by its terms or the terms of any L/C Related 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.

SECTION 1.06. Currency Equivalents Generally. Any amount specified in this Agreement (other than in Article II) or in any other Loan Document to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars to the extent necessary to give effect to the intent of this Agreement, such equivalent amount thereof in the applicable currency to be determined by the Agent at such time on the basis of the exchange rate for the purchase of such currency with Dollars as quoted by the Agent.

SECTION 1.07. Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, Consolidated EBITDA and the Fixed Charge Coverage Ratio (except in each case with respect to any transaction contemplated by the KPP Settlement Agreement) shall be calculated in the manner prescribed by this Section 1.07 for purposes other than in connection with the compliance of Section 5.03 hereof.

(b) For purposes of calculating Consolidated EBITDA and the Fixed Charge Coverage Ratio, Specified Transactions (and the incurrence or repayment of any Debt in connection therewith) that have been made (i) during the applicable Measurement Period and (ii) subsequent to such Measurement Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Measurement Period. If since the beginning of any applicable Measurement Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Measurement Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then the Fixed Charge Coverage Ratio shall be calculated to give pro forma effect thereto in accordance with this Section 1.07 (but for the avoidance of doubt, not in connection with the calculation of Consolidated EBITDA and the Fixed Charge Coverage Ratio required under Section 5.03).

(c) Whenever pro forma effect is to be given to a Specified Transaction for purposes of this Section 1.07, the pro forma calculations shall be made in good faith by a Financial Officer of the Borrower and include, for the avoidance of doubt, the amount of cost savings, operating expense reductions, other operating improvements and synergies actually realized as of the date of such pro forma calculation (calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized on the first day of such period as if such cost savings, operating expense reductions, other operating improvements and synergies were realized during the entirety of such period) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Debt included in the calculations of the Fixed Charge Coverage Ratio (other than Debt incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable Measurement Period and (ii) subsequent to the end of the applicable Measurement Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence or repayment of Debt, to the extent required, as if the same had occurred on the first day of the applicable Measurement Period.

SECTION 1.08. Divisions. Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company or other type of entity under Delaware law, or an allocation of assets to a series of a limited liability company or other type of entity under Delaware law (or the unwinding of such a division or allocation) as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company or other type of entity under Delaware law shall constitute a separate Person hereunder.

ARTICLE II
AMOUNTS AND TERMS OF THE REVOLVING LOANS AND LETTERS OF CREDIT

SECTION 2.01. The Revolving Loans and Letters of Credit.

(a) Revolving Credit Facility. Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make Revolving Loans in Dollars to the Borrower from time to time on any Business Day during the period from the Closing Date until the Termination Date with respect to the Revolving Credit Commitment of such Lender, in each case (A) in an amount for each such Revolving Loan not to exceed such Lender's Unused Revolving Credit Commitment at such time and (B) in an aggregate amount for all such Revolving Loans not to exceed such Lender's ratable portion (based on the aggregate amount of the Unused Revolving Credit Commitments at such time) of the Line Cap at such time. Each Borrowing shall be in an aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof (or such lesser amount as may be applied and reborrowed in accordance with Section 2.18) and shall consist of Revolving Loans of the same Type made on the same day by the Lenders ratably according to their respective Revolving Credit Commitments. Within the limits of each Lender's Revolving Credit Commitment, Borrower may borrow under this Section 2.01(a), prepay pursuant to Section 2.10 and reborrow under this Section 2.01(a).

(b) Letters of Credit. Each Issuing Bank agrees, on the terms and conditions hereinafter set forth, and in reliance upon the agreements of the other Lenders set forth in this Agreement, to issue or continue Letters of Credit for the account of the Company and its Subsidiaries from time to time on any Business Day during the period from the Closing Date until thirty (30) days before the Termination Date in an aggregate Available Amount not to exceed (i) for all Letters of Credit at any time the Letter of Credit Facility at such time, (ii) for all Letters of Credit issued by each Issuing Bank at any time such Issuing Bank's Letter of Credit Commitment at such time, and (iii) for each such Letter of Credit an amount equal to the Unused Revolving Credit Commitments of the Lenders at such time. No Letter of Credit shall have an expiration date (including all rights of the Company or the beneficiary to require renewal) later than five (5) Business Days before the Termination Date, provided, that, after giving effect to the issuance or continuation of such Letter of Credit, the aggregate amount that may be drawn under all outstanding Letters of Credit after the Maturity Date, shall not exceed the aggregate amount of the Extended Revolving Credit Commitments. Within the limits referred to above, the Company may from time to time request the Issuance of Letters of Credit under this Section 2.01(b).

(c) Overadvances. If Revolving Credit Facility Usage exceeds the Borrowing Base (“Overadvance”) at any time, the excess amount shall be payable by Borrower within one (1) Business Day after demand by the Agent, but all such Revolving Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Loan Documents. Agent may require Lenders to honor requests for Overadvance Loans and to forbear from requiring Borrower to cure an Overadvance, (a) when no other Event of Default is known to Agent, as long as (i) the Overadvance does not continue for more than thirty (30) consecutive days (and no Overadvance may exist for at least five (5) consecutive days thereafter before further Overadvance Loans are required), and (ii) the Overadvance is not known by Agent to exceed when taken together with the aggregate outstanding amount of any Protective Revolving Loans, the greater of (A) \$20,000,000 and (B) ten percent (10%) of the aggregate Revolving Credit Commitments at any time outstanding; and (b) regardless of whether an Event of Default exists, if Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery the Overadvance is not increased by more than an amount such that the outstanding amount of such Overadvance when taken together with all outstanding Protective Revolving Loans does not exceed the greater of (A) \$20,000,000 and (B) ten percent (10%) of the aggregate Revolving Credit Commitments in the aggregate and does not continue for more than thirty (30) consecutive days. In no event shall Overadvance Loans outstanding at any time be required that would cause Revolving Credit Facility Usage to exceed the aggregate Revolving Credit Commitments then in effect. Any funding of an Overadvance Loan or suffrance of an Overadvance shall not constitute a waiver by Agent or Lenders of the Event of Default caused thereby. In no event shall Borrower or other Loan Party be deemed a beneficiary of this Section nor shall it be authorized to enforce any of its terms.

(d) Protective Revolving Loans. The Agent shall be authorized, in its Permitted Discretion, at any time that any conditions in Section 3.02 are not satisfied, to make Revolving Loans in Dollars that are Base Rate Revolving Loans (any such Revolving Loans made pursuant to this Section 2.01(d), “Protective Revolving Loans”) in an aggregate amount (when aggregated with any outstanding Overadvance Loans not to exceed the greater of (i) \$20,000,000 and (ii) ten percent (10%) of the aggregate Revolving Credit Commitments at any time outstanding, if the Agent reasonably deems such Revolving Loans necessary to preserve or protect Collateral, or to enhance the collectability or repayment of Obligations; provided, that, no Protective Revolving Loan shall continue for more than ninety (90) consecutive days (and no further Protective Revolving Loan may be made for at least five (5) consecutive days after the repayment by the Borrower of any outstanding Protective Revolving Loans). Protective Revolving Loans shall constitute Obligations secured by the Collateral and shall be entitled to all of the benefits of the Loan Documents. Immediately upon the making of a Protective Revolving Loan, each applicable Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Agent a risk participation in such Protective Revolving Loan in an amount equal to the product of such applicable Lender’s Ratable Share times the amount of such Protective Revolving Loan. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Revolving Loan purchased hereunder, the Agent shall promptly distribute to such Lender, such Lender’s Ratable Share of all payments of principal and interest and all proceeds of Collateral received by the Agent in respect of such Protective Revolving Loan (and prior to such date, all payments on account of the Protective Revolving Loans shall be payable to Agent solely for its own account). The Required Lenders may at any time revoke the Agent’s authority to make further Protective Revolving Loans by written notice to the Agent. Absent such revocation, the Agent’s determination that funding of a Protective Revolving Loan is appropriate shall be conclusive. In no event shall Protective Revolving Loans cause the aggregate outstanding amount of the Revolving Loans of any Lender, plus such Lender’s Ratable Share of the outstanding amount of all Letter of Credit Obligations to exceed such Lender’s Revolving Credit Commitment then in effect. Protective Revolving Loans shall be payable by the Borrower on demand.

SECTION 2.02. Making the Revolving Loans.

(a) Except as otherwise provided in Section 2.03(a), each Borrowing shall be made on notice, given not later than (x) 11:00 a.m. (New York City time) on the second Business Day prior to the date of the proposed Borrowing in the case of a Borrowing consisting of Term SOFR Revolving Loans or (y) 11:00 a.m. (New York City time) on the date of the proposed Borrowing in the case of a Borrowing consisting of Base Rate Revolving Loans, by the Borrower (or the Company on behalf of the Borrower) to the Agent, which shall give to each applicable Lender prompt notice thereof by telecopier or any other electronic means agreed to by the Agent. Each such notice of a Borrowing (a “Notice of Borrowing”) shall be by telephone, confirmed promptly in writing, or by telecopier (or any other electronic means agreed to by the Agent), in substantially the form of Exhibit B-1 hereto, specifying therein the requested (i) date of such Borrowing, (ii) Type of Revolving Loans comprising such Borrowing, (iii) aggregate amount of such Borrowing, and (iv) in the case of a Borrowing consisting of Term SOFR Revolving Loans, the initial Interest Period for each such Revolving Loan. Except for Borrowings to be made as Swingline Loans, each Lender shall, before 1:00 p.m. (New York City time) on the date of such Borrowing make available for the account of its Applicable Lending Office to the Agent at the Agent’s Account, in same day funds, such Lender’s Ratable Share of such Borrowing. After the Agent’s receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Agent will make such funds available to the Borrower at the Agent’s address referred to in Section 9.02(a).

(b) Anything in subsection (a) above to the contrary notwithstanding, (i) the Borrower (or the Company on behalf of the Borrower) may not select Term SOFR Revolving Loans for any Borrowing if the aggregate amount of such Borrowing is less than \$10,000,000 or if the obligation of the Lenders to make Term SOFR Revolving Loans shall then be suspended pursuant to Section 2.08 or 2.12 and (ii) the Term SOFR Revolving Loans may not be outstanding as part of more than eighteen (18) separate Borrowings.

(c) Each Notice of Borrowing shall be irrevocable and binding on the Borrower delivering such notice. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of Term SOFR Revolving Loans, the Borrower shall indemnify each applicable Lender against any loss, cost or expense incurred by such Lender as a result of any failure of Borrower to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Revolving Loan to be made by such Lender as part of such Borrowing when such Revolving Loan, as a result of such failure, is not made on such date.

(d) Unless the Agent shall have received notice from a Lender prior to the time of any Borrowing that such Lender will not make available to the Agent such Lender's ratable portion of such Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Borrowing in accordance with subsection (a) of this Section 2.02, as applicable, and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Agent, such Lender and the Borrower severally agree to repay to the Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to the Agent, at (i) in the case of Borrower, the interest rate applicable at the time to the Revolving Loans comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate. If such Lender shall repay to the Agent such corresponding amount, such amount so repaid shall constitute such Lender's Revolving Loan as part of such Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Revolving Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Revolving Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Loan to be made by such other Lender on the date of any Borrowing.

SECTION 2.03. Issuance of and Drawings and Reimbursement Under Letters of Credit.

(a) Request for Issuance. Each Letter of Credit shall be issued upon notice, given not later than 11:00 a.m. (New York City time) on the fifth Business Day prior to the date of the proposed Issuance of such Letter of Credit (or on such shorter notice as the applicable Issuing Bank may agree), by the Company to any Issuing Bank, and such Issuing Bank shall give the Agent, prompt notice thereof. Each such notice by the Company of Issuance of a Letter of Credit (a "Notice of Issuance") shall be by telephone, confirmed promptly in writing, or by telecopier (or any other electronic means agreed to by the Agent), specifying therein (A) the requested date of such Issuance (which shall be a Business Day), (B) the Available Amount of such Letter of Credit, (C) expiration date of such Letter of Credit (which shall not be later than five (5) Business Days before the Termination Date with respect to the Revolving Credit Commitment of the Issuing Bank in its capacity as a Lender, (D) the name and address of the beneficiary of such Letter of Credit, (E) the form of such Letter of Credit, and that such Letter of Credit shall be issued pursuant to such application and agreement for letter of credit as such Issuing Bank and the Company shall agree for use in connection with such requested Letter of Credit (a "Letter of Credit Agreement") and (F) such other matters as the applicable Issuing Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Notice of Issuance shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank, (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 the applicable Issuing Bank may require. Additionally, the Company shall furnish to the applicable Issuing Bank and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, as such Issuing Bank or the Agent may require. If the requested form of such Letter of Credit is acceptable to the applicable Issuing Bank in its reasonable discretion (it being understood that any such form shall have only explicit documentary conditions to draw and shall not include discretionary conditions), such Issuing Bank will, upon fulfillment of the applicable conditions set forth in Section 3.02, make such Letter of Credit available to the Company at its office referred to in Section 9.02 or as otherwise agreed with the Company in connection with such Issuance. In the event and to the extent that the provisions of any Letter of Credit Agreement shall conflict with this Agreement, the provisions of this Agreement shall govern.

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if: (A) any order, judgment or decree of any Governmental Authority shall by its terms purport to enjoin or restrain such Issuing Bank from issuing the Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it; (B) except as otherwise agreed by the Agent and such Issuing Bank, the Letter of Credit is in an initial stated amount less than \$100,000, in the case of a commercial Letter of Credit, or \$100,000, in the case of a standby Letter of Credit; (C) the Letter of Credit is to be denominated in a currency other than Dollars; (D) any Lender is at that time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with the Company or such Lender to eliminate such Issuing Bank's actual or potential fronting exposure (after giving effect to Section 2.19(f)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other Letter of Credit Obligations as to which such Issuing Bank has actual or potential fronting exposure, as it may elect in its sole discretion; (E) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or (F) after giving effect to the issuance or continuation of such Letter of Credit, the aggregate amount that may be drawn under all outstanding Letters of Credit after the Maturity Date, shall exceed the aggregate amount of the Extended Revolving Credit Commitments.

(iii) No Issuing Bank shall amend or continue any Letter of Credit if such Issuing Bank would not be permitted at such time to issue the Letter of Credit in its amended or continued form under the terms hereof.

(iv) Each Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Issuing Bank shall have all of the benefits and immunities (A) provided to the Agent in Article VIII with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article VIII included such Issuing Bank with respect to such acts or omissions, and (B) as additionally provided herein with respect to such Issuing Bank.

(v) If the Borrower so requests in an applicable Notice of Issuance, the Issuing Bank may, in its discretion, agree to issue a Letter of Credit that has automatic extension provisions (each an "Auto-Extension Letter of Credit"); provided, that, any such Auto-Extension Letter of Credit must permit the Issuing Bank to prevent any such extension at least once in each twelve (12) 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 (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Bank, the Borrower shall not be required to make a specific request to the Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Issuing Bank to permit the extension of such Letter of Credit at any time to a date not later than the expiration date of such Letter of Credit; provided, however, that the Issuing Bank shall not permit any such extension if (A) the Issuing Bank 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 or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Extension Notice Date (x) from the Agent that the Required Lenders have elected not to permit such extension or (y) from the Agent, any Lender or any Loan Party that one or more of the applicable conditions specified in Section 3.02 is not then satisfied, and in each case directing the Issuing Bank not to permit such extension.

(vi) No Issuing Bank shall have any obligation to issue any Letter of Credit hereunder if the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension thereof (without giving effect to any auto-extension features).

(vii) No Issuing Bank shall have any obligation to issue any Letter of Credit hereunder if the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension thereof (without giving effect to any auto-extension features).

(b) Participations. By the Issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing or decreasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Ratable Share of the Available Amount of such Letter of Credit. The Company hereby agrees to each such participation. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of such Issuing Bank, such Lender's Ratable Share of each drawing made under a Letter of Credit funded by such Issuing Bank and not reimbursed by the Company on the date funded, or of any reimbursement payment required to be refunded to the Company for any reason, which amount will be advanced, and deemed to be a Revolving Loan hereunder, regardless of the satisfaction of the conditions set forth in Section 3.02. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Ratable Share of the Available Amount of such Letter of Credit at each time such Lender's Revolving Credit Commitment is amended pursuant to an assignment in accordance with Section 9.08 or otherwise pursuant to this Agreement.

(c) Drawing and Reimbursement. The payment by an Issuing Bank of a draft drawn under any Letter of Credit which is not reimbursed by the Company or the Borrower on the date funded shall constitute for all purposes of this Agreement the making by any such Issuing Bank of a Revolving Loan under the Revolving Credit Facility which shall be a Base Rate Revolving Loan, in the amount of such draft, without regard to whether the making of such a Revolving Loan would exceed such Issuing Bank's Unused Revolving Credit Commitment. Each Issuing Bank shall give prompt notice to the Company and the Agent of each drawing under any Letter of Credit issued by it. Upon written demand by such Issuing Bank, with a copy of such demand to the Agent and the Company, each applicable Lender shall pay to the Agent such Lender's Ratable Share of such outstanding Revolving Loan pursuant to Section 2.03(b). Each applicable Lender acknowledges and agrees that its obligation to make Revolving Loans pursuant to this paragraph (c) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Promptly after receipt thereof, the Agent shall transfer such funds to such Issuing Bank. Each Lender agrees to fund its Ratable Share of an outstanding Revolving Loan on (i) the Business Day on which demand therefor is made by such Issuing Bank, provided, that, notice of such demand is given not later than 11:00 a.m. (New York City time) on such Business Day, or (ii) the first Business Day next succeeding such demand if notice of such demand is given after such time. If and to the extent that any Lender shall not have so made the amount of such Revolving Loan available to the Agent, such Lender agrees to pay to the Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by any such Issuing Bank until the date such amount is paid to the Agent, at the Federal Funds Rate for its account or the account of such Issuing Bank, as applicable. If such Lender shall pay to the Agent such amount for the account of any such Issuing Bank on any Business Day, such amount so paid in respect of principal shall constitute a Revolving Loan made by such Lender on such Business Day for purposes of this Agreement, and the outstanding principal amount of the Revolving Loan made by such Issuing Bank shall be reduced by such amount on such Business Day.

(d) Letter of Credit Reports. Each Issuing Bank shall furnish (i) to the Agent (with a copy to the Company) on the first Business Day of each month a written report summarizing Issuance and expiration dates of Letters of Credit issued by such Issuing Bank during the preceding month and drawings during such month under all Letters of Credit and (ii) to the Agent (with a copy to the Company) on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit issued by such Issuing Bank.

(e) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable Issuing Bank and the Company when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(f) Failure to Make Revolving Loans. The failure of any Lender to make the Revolving Loan to be made by it on the date specified in Section 2.03(c) shall not relieve any other Lender of its obligation hereunder to make its Revolving Loan on such date, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Loan to be made by such other Lender on such date. No failure by any Lender to make such Revolving Loans shall limit or restrict the availability of any Letter of Credit to the Company.

(g) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Company shall be obligated to reimburse the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit. The Company hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Company, and that the Company's business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.04. Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Agent for the account of each applicable Lender a commitment fee on the aggregate amount of such Lender's Unused Revolving Credit Commitment (without giving effect to such Lender's Ratable Share of any outstanding Swingline Loans) from the Closing Date until the Termination Date with respect to the Class of Revolving Credit Commitments of such Lender calculated by multiplying such Lender's Unused Revolving Credit Commitment by the Applicable Percentage in effect from time to time, payable in arrears monthly on the first day of each calendar month and on the applicable Termination Date; provided, however, that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(b) Letter of Credit Fees.

(i) The Borrower shall pay to the Agent for the account of each applicable Lender (other than a Defaulting Lender) a commission on such Lender's Ratable Share of the average daily aggregate Available Amount of all Letters of Credit issued and outstanding from time to time at a rate per annum equal to the Letter of Credit Fee Rate in effect from time to time during such calendar quarter, payable in arrears monthly on the first day of each calendar month, and on the Termination Date with respect to the Class of Revolving Credit Commitment of such Lender; provided, that, the Letter of Credit Fee Rate shall be deemed to be 200 basis points above the Letter of Credit Fee Rate in effect if the Borrower is required to pay Default Interest pursuant to Section 2.07(c).

(ii) The Borrower shall pay to each Issuing Bank, for its own account, a fronting fee of one-quarter percent (0.25%) of the face amount of all Letters of Credit issued by such Issuing Bank and outstanding from time to time, payable in arrears monthly on the first day of each calendar month and on the Termination Date with respect to the Class of Revolving Credit Commitment of such Issuing Bank in its capacity as a Lender and such other customary commissions, issuance fees, transfer fees and other customary fees and charges in connection with the Issuance or administration of each Letter of Credit as the Borrower and such Issuing Bank shall agree.

(c) Other Fees. The Company shall pay the fees set forth in the Fee Letters, as such Fee Letters may from time to time be amended by the Company and the Agent and, to the extent any such amendment is adverse to the interests of any Arranger, by such Arranger, it being agreed that an increase in the amount of any administrative agency or other similar fee payable to the Agent is not adverse to the Arrangers.

SECTION 2.05. Termination or Reduction of the Commitments.

(a) Optional. The Borrower shall have the right at any time and without penalty, upon at least three (3) Business Days' notice to the Agent, to terminate in whole or permanently reduce in part the Unissued Letter of Credit Commitments and the Unused Revolving Credit Commitments; provided, that, each partial reduction of a Facility (i) shall be in an aggregate amount of \$5,000,000 and an integral multiple of \$1,000,000 in excess thereof and (ii) if made under the Revolving Credit Facility, shall be made ratably among the Lenders in accordance with their Revolving Credit Commitments in respect of the Revolving Credit Facility.

(b) Mandatory. Unless previously terminated, the Non-Extended Revolving Credit Commitments shall automatically terminate on the Maturity Date, and the Extended Revolving Credit Commitments shall automatically terminate on the Extended Maturity Date. The Letter of Credit Facility shall be permanently reduced from time to time on the date of each reduction in the Revolving Credit Facility by the amount, if any, by which the amount of the Letter of Credit Facility exceeds the Revolving Credit Facility after giving effect to such reduction of the Revolving Credit Facility.

SECTION 2.06. Letter of Credit Drawings. The obligations of the Company under any Letter of Credit Agreement and any other agreement or instrument relating to any Letter of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, such Letter of Credit Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances (it being understood that any such payment by the Company is without prejudice to, and does not constitute a waiver of, any rights the Company might have or might acquire as a result of the payment by any Lender of any draft or the reimbursement by the Company thereof, including, without limitation, pursuant to Section 9.14):

(a) any lack of validity or enforceability of this Agreement or any Note, or of any Letter of Credit Agreement, any Letter of Credit or any other agreement or instrument relating thereto (such Letter of Credit Agreement, Letter of Credit and related instruments or instruments being, collectively, the "L/C Related Documents");

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of Borrower in respect of any L/C Related Document or any other amendment or waiver of or any consent to departure from all or any of the L/C Related Documents;

(c) the existence of any claim, set-off, defense or other right that Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for which any such beneficiary or any such transferee may be acting), any Issuing Bank, the Agent, any Lender or any other Person, whether in connection with the transactions contemplated by the L/C Related Documents or any unrelated transaction;

(d) any statement or any other document presented under a 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;

(e) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit;

(f) any exchange, release or non-perfection of any Collateral or other collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the obligations of the Borrower in respect of the L/C Related Documents; or

(g) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company or a guarantor.

SECTION 2.07. Rates and Payment of Interest.

(a) The Obligations shall bear interest (i) if a Base Rate Revolving Loan, at the Base Rate in effect from time to time, plus the Applicable Margin and (ii) if a Term SOFR Revolving Loan, at Term SOFR for the applicable Interest Period, plus the Applicable Margin.

(b) Interest shall accrue from the date a Revolving Loan is advanced or Obligation is payable, as applicable, until paid in full by Borrower, and shall in no event be less than zero at any time. Interest accrued on the Revolving Loans is due and payable in arrears (i) on each Interest Payment Date; (ii) concurrently with prepayment of any Revolving Loan, with respect to the principal amount being prepaid; and (iii) on the Termination Date. Interest accrued on any other Obligations (including, to the extent permitted by law, interest not paid when due) shall be due and payable as provided in the applicable agreements or, if no payment date is specified, on demand (or if earlier, the Termination Date) and except as may be otherwise provided herein or in any other Loan Documents, or as Agent may otherwise agree, shall bear interest at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Revolving Loans.

(c) Upon the occurrence and during the continuance of an Event of Default under Section 6.01(a), the Agent may, and upon the request of the Required Lenders shall, require and notify the Borrower to pay interest ("Default Interest") on (i) the unpaid principal amount of each Revolving Loan owing to each Lender, payable in arrears on the dates referred to in clause (b) above, at a rate per annum equal at all times to two percent (2.0%) per annum above the rate per annum required to be paid on such Revolving Loan pursuant to clause (a) above and (ii) to the fullest extent permitted by law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to two percent (2.0%) per annum above the rate per annum required to be paid on Base Rate Revolving Loans pursuant to clause (a)(i) above, provided, however, that following acceleration of the Revolving Loans pursuant to Section 6.01, Default Interest shall accrue and be payable hereunder whether or not previously required by the Agent.

(d) Maximum Interest Rates. 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 the 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 applicable Revolving Loans or, if it exceeds such unpaid principal, refunded to the Borrower, as applicable. In determining whether the interest contracted for, charged, or received by the 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.

SECTION 2.08. Application of Term SOFR to Outstanding Revolving Loans.

(a) Borrower may elect to convert any portion of Base Rate Revolving Loans to, or to continue any Term SOFR Revolving Loan at the end of its Interest Period as, a Term SOFR Revolving Loan. During any Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a Term SOFR Revolving Loan.

(b) Borrower shall give Agent a Notice of Conversion/Continuation by 11:00 a.m. at least two (2) Business Days before the requested conversion or continuation date. Promptly after receiving such notice, Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation is irrevocable, and shall specify the amount of Revolving Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be one month if not specified). If, at expiration of an Interest Period for a Term SOFR Revolving Loan, Borrower have failed to deliver a Notice of Conversion/Continuation, the Revolving Loan shall convert to a Base Rate Revolving Loan. Agent does not warrant or accept responsibility for, nor shall it have any liability with respect to, administration, submission or any other matter related to any 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 alternate, replacement or successor to such rate (including any Successor Rate), or any component thereof, or the effect of any of the foregoing, or of any Conforming Changes. Agent may select information source(s) in its discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including any Successor Rate), or any component thereof, in each case pursuant to the terms hereof, and shall have no liability to any Lender, obligor or other Person 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 act or omission related to or affecting the selection, determination or calculation of any rate (or component thereof) provided by such information source(s).

SECTION 2.09. Interest Periods.

(a) Borrower shall select an interest period ("Interest Period") of one, three or six months (in each case, subject to availability) to apply to each Term SOFR Revolving Loan; provided, that, (i) the Interest Period shall begin on the date the Revolving Loan is made or continued as, or converted into, a Term SOFR Revolving Loan, and shall expire one, three or six months thereafter, as applicable; (ii) if any Interest Period begins on the last day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month at its end, or if such corresponding day falls after the last Business Day of the end month, then the Interest Period shall expire on the end month's last Business Day; and if any Interest Period would otherwise expire on a day that is not a Business Day, the period shall expire on the next Business Day; and (iii) no Interest Period for any Class of Revolving Loans shall extend beyond the Termination Date with respect to such Class.

(b) The Agent shall give prompt notice to the Company and the Lenders of the applicable interest rate determined by the Agent for purposes of Section 2.07(a)(i) or (ii).

(c) If, with respect to any Term SOFR Revolving Loans, Lenders owed at least fifty percent (50%) of the then aggregate principal amount of such outstanding Term SOFR Revolving Loans thereof notify the Agent that the Term SOFR for any Interest Period for such Revolving Loans will not adequately reflect the cost to such Lenders of making, funding or maintaining their respective Term SOFR Revolving Loans for such Interest Period (a "Market Disruption Event"), the Agent shall forthwith so notify the Company and the Lenders, whereupon (i) each Term SOFR Revolving Loan will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Revolving Loan, and (ii) the obligation of the Lenders to make, or to Convert Revolving Loans into, Term SOFR Revolving Loans shall be suspended until the Agent shall notify the Borrower and such Lenders that the circumstances causing such suspension no longer exist. During any period in which a Market Disruption Event is in effect, Borrower may request that the Agent confirm that the circumstances giving rise to the Market Disruption Event continue to be in effect; provided, that, (A) Borrower shall not be permitted to submit any such request more than once in any thirty (30) day period and (B) nothing contained in this Section 2.09 or the failure to provide confirmation of the continued effectiveness of such Market Disruption Event shall in any way affect the Agent's or Required Lenders' right to provide any additional notices of a Market Disruption Event as provided in this Section 2.09. If the Agent has not confirmed after request of such report from the Borrower that a Market Disruption Event has occurred, then such Market Disruption Event shall be deemed to be no longer existing.

(d) If Borrower shall fail to select the duration of any Interest Period for any Term SOFR Revolving Loans in accordance with Section 2.09, the Agent will forthwith so notify Borrower and the Lenders and such Revolving Loans will automatically, on the last day of the then existing Interest Period therefor, Convert into Base Rate Revolving Loans.

(e) On the date on which the aggregate unpaid principal amount of Term SOFR Revolving Loans comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than \$5,000,000, such Revolving Loans shall automatically Convert into Base Rate Revolving Loan.

(f) Upon the occurrence and during the continuance of any Event of Default under Section 6.01(a) or any Borrowing Base Deficiency, (i) each Term SOFR Revolving Loan will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Revolving Loan and (ii) the obligation of the Lenders to make, or to Convert Revolving Loans into, Term SOFR Revolving Loans shall be suspended.

SECTION 2.10. Repayments of Revolving Loans; Prepayments of Revolving Loans.

(a) Repayment of Revolving Loans. The Borrower shall repay to the Agent for the ratable account of each applicable Lender on the Termination Date for the applicable Class of Revolving Credit Commitments of such Lender the aggregate principal amount of the Revolving Loans made by such Lender to Borrower then outstanding. Subject to 2.01(c), if an Overadvance exists at any time, Borrower shall, on the sooner of the Agent's demand or the first Business Day after Borrower has knowledge thereof, repay Revolving Loans or Cash Collateralize Letters of Credit in an amount sufficient to reduce Revolving Credit Facility Usage to the Borrowing Base. If, after the occurrence and during the continuation of any Cash Control Trigger Event, any asset disposition includes the disposition of Accounts, Inventory, or Eligible Equipment, Borrower shall apply Net Cash Proceeds to repay Revolving Loans in an amount equal to the greater of (a) the net book value of such Accounts, Inventory, and Eligible Equipment or (b) the reduction in the Borrowing Base resulting from the disposition. Upon the occurrence of the Maturity Date, the Ratable Share with respect to the Extended Revolving Credit Commitments shall be readjusted without any further action or consent of any other party (calculated without regard to the Non-Extended Revolving Credit Commitments) to reflect the expiration of the Non-Extended Revolving Credit Commitments.

(b) Optional Prepayments. Borrower may, at any time, upon notice at least two (2) Business Days' prior to the date of such prepayment, in the case of Term SOFR Revolving Loans, and not later than 11:00 a.m. (New York City time) on the date of such prepayment, in the case of Base Rate Revolving Loans, to the Agent stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given Borrower shall, prepay the outstanding principal amount of the Revolving Loans comprising part of the same Borrowing made to it in whole or in part, together with accrued interest to the date of such prepayment on the principal amount prepaid; provided, that, (x) each partial prepayment shall be in an aggregate principal amount of \$5,000,000, or an integral multiple of \$1,000,000 in excess thereof and (y) in the event of any such prepayment of a Term SOFR Revolving Loan, Borrower shall be obligated to reimburse the Lenders in respect thereof pursuant to Section 9.04(c).

(c) Mandatory Prepayments. Borrower shall, in the time periods set forth in Section 2.01(c), prepay (with no corresponding commitment reduction) an aggregate principal amount of the Revolving Loans owed by Borrower and comprising part of the same Borrowings or Cash Collateralize Letters of Credit in an amount equal to the amount by which Revolving Credit Facility Usage exceeds the Line Cap (except as a result of Protective Revolving Loans made under Section 2.01(d) and not outstanding for more than ninety (90) consecutive days) (such amount, the "Excess Usage"); provided, that, in respect of any prepayment under this subsection directly attributable to any adjustment of Reserves, such prepayment shall be made not later than the Business Day immediately following the date such adjusted Reserves became effective.

(ii) Each prepayment made pursuant to this Section 2.10(c) shall be made together with any interest accrued to the date of such prepayment on the principal amounts prepaid and, in the case of any prepayment of a Term SOFR Revolving Loan on a date other than the last day of an Interest Period or at its maturity, any additional amounts which the Borrower shall be obligated to reimburse to the Lenders in respect thereof pursuant to Section 9.04(c).

(iii) The Agent shall give prompt notice of any prepayment required under this Section 2.10(c) to Lenders.

(d) Cash Dominion. After the occurrence and during the continuation of any Cash Control Trigger Event, the Net Cash Proceeds of all insurance payments in respect of Equipment or Inventory shall be paid to the Agent and shall, in the Agent's sole discretion, (i) be released to the Borrower or applicable Guarantor for the repair, replacement or restoration thereof, (ii) be held as additional Collateral hereunder or applied as specified in Section 19(b) of the Security Agreement or (iii) be released to the Agent Sweep Account and applied as provided in Section 2.18(h) hereof.

SECTION 2.11. Increased Costs.

(a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining Term SOFR Revolving Loans or of agreeing to issue or of issuing or maintaining or participating in Letters of Credit (excluding for purposes of this Section 2.11 any such increased costs resulting from (x) Taxes (which for purposes of this exclusion shall include withholding taxes that are excluded from Taxes pursuant to Sections 2.14(a) and (e)) or Other Taxes (as to which Section 2.14 shall govern) and (y) changes in the basis of taxation of overall net income or overall gross income by the United States or by the foreign jurisdiction or state under the laws of which such Lender is organized or has its Applicable Lending Office or any political subdivision thereof), then the Borrower shall from time to time, upon written demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost; provided, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office if the making of such a designation would avoid the need for, or reduce the amount of, such increased cost and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost, submitted to the Borrower and the Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

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 regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in law", regardless of the date enacted, adopted or issued.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) affects or would affect the amount of capital or liquidity required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital or liquidity is increased by or based upon the existence of such Lender's commitment to lend or to issue or participate in Letters of Credit hereunder and other commitments of such type or the issuance or maintenance of or participation in the Letters of Credit (or similar contingent obligations), then, upon demand by such Lender (with a copy of such demand to the Agent), the Borrower shall pay to the Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such corporation in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital or liquidity to be allocable to the existence of such Lender's commitment to lend or to issue or participate in Letters of Credit hereunder or to the issuance or maintenance of or participation in any Letters of Credit. A certificate as to such amounts submitted to the Borrower and the Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error.

(c) A Lender will only be entitled to such compensation if such Lender provides a certificate to the Agent and the Company setting forth in reasonable detail (i) the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and (ii) stating that the claim for additional amounts referred to therein is generally consistent with such Lender's treatment of similarly situated customers of such Lender whose transactions with such Lender are similarly affected by the change in circumstances giving rise to such payment. Such certificate, when delivered to the Company, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.11(c) shall not constitute a waiver of such Lender's right to demand such compensation; provided, that, Borrower shall not be required to compensate a Lender or the Agent pursuant to this Section 2.11(c) for any increased costs or reductions incurred more than one hundred twenty (120) days prior to the date that such Lender or the Agent notifies the Company of the change in law giving rise to such increased costs or reductions and of such Lender's or the Agent's intention to claim compensation therefor; provided, further, that, if the change in law giving rise to such increased costs or reductions is retroactive, then the 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.12. Illegality. If any Lender determines that any applicable law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Applicable Lending Office to perform any of its obligations hereunder, to make, maintain, issue, fund or commit to, participate in, or charge applicable interest or fees with respect to any Revolving Loan or Letter of Credit, or to determine or charge interest or fees in each case based on SOFR or Term SOFR, then, on notice thereof by such Lender to Agent, (a) any obligation of such Lender to perform such obligations, to make, maintain, issue, fund, commit to or participate in the Revolving Loan or Letter of Credit (or to charge interest or fees otherwise applicable thereto), or to continue or convert Revolving Loans as Term SOFR Revolving Loans, shall be suspended and Borrower shall make such appropriate accommodations regarding affected Letters of Credit as such Lender may reasonably request, (b) if such notice asserts the illegality of such Lender to make or maintain Base Rate Revolving Loans whose interest rate is determined by reference to Term SOFR, the interest rate applicable to such Lender's Base Rate Revolving Loans shall, as necessary to avoid such illegality, be determined by Agent without reference to the Term SOFR component of Base Rate, in each case until such Lender notifies Agent that the circumstances giving rise to Lender's determination no longer exist. Upon delivery of such notice, Borrower shall either prepay the Term SOFR Revolving Loans or convert the Term SOFR Revolving Loans of such Lender to Base Rate Revolving Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain the Term SOFR Revolving Loan and charge applicable interest to such day, or immediately, if such Lender cannot so maintain such Term SOFR Revolving Loan. Upon any such prepayment or conversion of a Loan pursuant to this Section, Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 2.13. Payments and Computations.

(a) The Borrower shall make each payment hereunder without condition or deduction for any right of counterclaim, defense, recoupment or set-off, not later than 11:00 a.m. (New York City time) on the day when due in Dollars to the Agent at the Agent's Account in same day funds. The Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal, interest, fees or commissions ratably (other than amounts payable pursuant to Section 2.04, 2.11, 2.14 or 9.04(c)) to the Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon any Assuming Lender becoming a Lender hereunder as a result of a Commitment Increase pursuant to Section 2.21, and upon the Agent's receipt of such Lender's Assumption Agreement and recording of the information contained therein in the Register, from and after the applicable Increase Date the Agent shall treat each Assuming Lender as a Lender under this Agreement and shall make all payments hereunder and under any Notes issued in connection therewith pro rata among the Lenders taking into account the interest assumed thereby by the Assuming Lender. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 9.08(c), from and after the effective date specified in such Assignment and Acceptance, the Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) Borrower hereby authorizes each Lender, if and to the extent payment owed to such Lender is not made when due hereunder or under the Note held by such Lender, to charge from time to time against any or all of Borrower's accounts with such Lender any amount so due.

(c) All computations of interest and of fees and Letter of Credit commissions shall be made by the Agent on the basis of a year of three hundred sixty (360) days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees or commissions are payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(d) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, fee or commission, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of Term SOFR Revolving Loans to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(e) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that Borrower will not make such payment in full, the Agent may assume that Borrower has made such payment in full to the Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at the Federal Funds Rate.

(f) Subject to Section 6.04 (or required to be applied in accordance with Section 2.10), if the Agent receives funds for application to the Obligations of the Borrower under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify, or the Borrower does not direct, the Revolving Loans to which, or the manner in which, such funds are to be applied, the Agent may, but shall not be obligated to, elect to distribute such funds ratably to the outstanding Obligations, (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and unreimbursed amounts drawn under Letters of Credit then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and such Letter of Credit obligations then due to such parties. The ratable portion of such payments to each Lender shall be based on its Ratable Share as then in effect.

(g) Except to the extent a time of payment of, or period within which payment is required in respect of, any amount payable hereunder or under any of the other Loan Documents is specified in any Loan Document, all amounts payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first day of each month at any time that Obligations or Commitments are outstanding. Borrower hereby authorizes Agent, from time to time without prior notice to Borrower, to charge all interest, fees, costs, expenses and other amounts payable hereunder or under any of the other Loan Documents when due and payable to the loan account, provided, that, interest and fees (including pursuant to Sections 2.04(a), (b) and (c) and Section 2.07(a)(ii) above shall not be charged to any loan account until three (3) Business Days after Agent has provided Borrower with an invoice for any such amount. Any interest, fees, costs, expenses, or other amounts payable hereunder or under any other Loan Document that are charged to a loan account shall thereupon constitute Revolving Loans hereunder and shall initially accrue interest at the rate then applicable to Revolving Loans that are Base Rate Revolving Loans (unless and until converted into Term SOFR Revolving Loans in accordance with the terms of this Agreement).

SECTION 2.14. Taxes.

(a) Any and all payments by any Loan Party to or for the account of any Lender, any Arranger or the Agent hereunder or under the Notes shall be made, in accordance with Section 2.13 or the applicable provisions of such other documents, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, remittances, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender, each Arranger and the Agent (i) taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction under the laws of which such Lender, such Arranger or the Agent (as the case may be) is organized or in which its principal executive office is located, or any political subdivision thereof and, in the case of each Lender, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction of such Lender's Applicable Lending Office or any political subdivision thereof, (ii) any amounts required to be withheld under FATCA that would not have been imposed but for the failure of the Agent, Arranger or Lender, as applicable, to satisfy the applicable requirements of FATCA, and (iii) any amounts that are required to be withheld as a result of a Lender's failure to comply with the requirements of paragraph (e) or (j) of this Section (all such non-excluded taxes, levies, imposts, deductions, remittances, charges, withholdings and liabilities in respect of payments hereunder or under the Notes being hereinafter referred to as "Taxes"). If any Loan Party shall be required by law to deduct, remit or withhold any Taxes from or in respect of any sum payable hereunder or under any Note to any Lender, any Arranger or the Agent, (i) the sum payable to such Loan Party shall be increased as may be necessary so that after making all required deductions, remittances or withholdings (including deductions applicable to additional sums payable under this Section 2.14), such Lender, such Arranger or the Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall pay the full amount deducted, remitted or withheld to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, each Loan Party shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made by such Loan Party hereunder or under any other Loan Documents or from the execution, delivery or registration of, performing under, or otherwise with respect to, this Agreement or the other Loan Documents (hereinafter referred to as "Other Taxes").

(c) The Loan Parties shall indemnify each Lender, each Arranger and the Agent for and hold it harmless against the full amount of Taxes or Other Taxes (including, without limitation, taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 2.14) imposed on or paid or remitted by such Lender, such Arranger or the Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within thirty (30) days from the date such Lender, such Arranger or the Agent (as the case may be) makes written demand therefor with appropriate supporting documentation.

(d) Within thirty (30) days after the date of any payment of taxes, the appropriate Loan Party shall furnish to the Agent, at its address referred to in Section 9.02, the original or a certified copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Agent. In the case of any payment hereunder or under the Notes or any other documents to be delivered hereunder by or on behalf of a Loan Party through an account or branch outside the United States or by or on behalf of a Loan Party by a payor that is not a United States person, if such Loan Party determines that no Taxes are payable in respect thereof, such Loan Party shall furnish, or shall cause such payor to furnish, to the Agent, at such address, an opinion of counsel reasonably acceptable to the Agent stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e), the terms "United States" and "United States person" shall have the meanings specified in Section 7701 of the Code.

(e) Each Lender organized under the laws of a jurisdiction outside the United States, on or prior to the date of its execution and delivery of this Agreement or on or prior to the designation of any different Applicable Lending Office and on the date of the Assumption Agreement or the Assignment and Acceptance pursuant to which it becomes a Lender in the case of each other Lender, and from time to time thereafter as reasonably requested in writing by the Company (but only so long as such Lender remains lawfully able to do so), shall provide each of the Agent and the Company with two original Internal Revenue Service Forms W-8BEN, W-8BEN-E or W-8ECI or (in the case of a Lender that has certified in writing to the Agent that it is not (i) a “bank” as defined in Section 881(c)(3)(A) of the Code, (ii) a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of any Loan Party or (iii) a CFC related to any Loan Party (within the meaning of Section 864(d)(4) of the Code)), Internal Revenue Service Form W-8BEN or W-8BEN-E, as appropriate, or any successor or other form prescribed by the Internal Revenue Service, certifying that such Lender is exempt from or entitled to a reduced rate of United States withholding tax on payments pursuant to this Agreement or any other Loan Document or, in the case of a Lender that has certified that it is not a “bank” as described above, certifying that such Lender is a foreign corporation, partnership, estate or trust. If the form provided by a Lender at the time such Lender first becomes a party to this Agreement indicates a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes unless and until such Lender provides the appropriate forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such form; provided, however, that, if at the date of the Assignment and Acceptance pursuant to which a Lender assignee becomes a party to this Agreement, the Lender assignor was entitled to payments under subsection (a) in respect of United States withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States withholding tax, if any, applicable with respect to the Lender assignee on such date. If any form or document referred to in this subsection (e) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the Closing Date by Internal Revenue Service Form W-8BEN, W-8BEN-E or W-8ECI or the related certificate described above, that the Lender reasonably considers to be confidential, the Lender shall give notice thereof to the Company and shall not be obligated to include in such form or document such confidential information, except directly to a Governmental Authority or other Person subject to a reasonable confidentiality agreement. In addition, upon the written request of the Company, any other certification, identification, information, documentation or other reporting requirement shall be delivered if (i) delivery thereof is required by a change in the law, regulation, administrative practice or any applicable tax treaty as a precondition to exemption from or a reduction in the rate of deduction or withholding; (ii) the Agent or Lender, as the case may be, is legally entitled to make delivery of such item; and (iii) delivery of such item will not result in material additional costs unless Borrower shall have agreed in writing to indemnify Lender or the Agent for such costs.

(f) For any period with respect to which a Lender has failed to provide the Company with the appropriate form, certificate or other document described in Section 2.14(e) (other than if such failure is due to a change in law, or in the interpretation or application thereof, occurring subsequent to the date on which a form, certificate or other document originally was required to be provided, or if such form, certificate or other document otherwise is not required under subsection (e) above), such Lender shall not be entitled to indemnification under Section 2.14(a) or (c) with respect to Taxes imposed by the United States of America by reason of such failure; provided, however, that should a Lender become subject to Taxes because of its failure to deliver a form, certificate or other document required hereunder, the Loan Parties, at such Lender’s expense, shall take such steps as the Lender shall reasonably request to assist the Lender to recover such Taxes.

(g) Any Lender claiming any additional amounts payable pursuant to this Section 2.14 agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender.

(h) If any Lender determines, in its sole discretion, that it has actually and finally realized, by reason of a refund, deduction or credit of any Taxes paid or reimbursed by a Loan Party pursuant to subsection (a) or (c) above in respect of payments under this Agreement or the other Loan Documents, a current monetary benefit that it would otherwise not have obtained, and that would result in the total payments under this Section 2.14 exceeding the amount needed to make such Lender whole, such Lender shall pay to the applicable Loan Party, with reasonable promptness following the date on which it actually realizes such benefit, an amount equal to the lesser of the amount of such benefit or the amount of such excess, in each case net of all out-of-pocket expenses in securing such refund, deduction or credit; provided, that, the Borrower, upon the request of the Agent or such Lender, agrees to repay the amount paid over to any Loan Party to the Agent or such Lender in the event the Agent or such Lender is required to repay such amount to such Governmental Authority.

(i) If any Loan Party determines in good faith that a reasonable basis exists for contesting the applicability of any Tax or Other Tax, the Agent, the relevant Arranger or the relevant Lender shall cooperate with such Loan Party, upon the request and at the expense of such Loan Party, in challenging such Tax or Other Tax. Nothing in this Section 2.14(i) shall require the Agent, any Arranger or any Lender to disclose the contents of its tax returns or other confidential information to any Person.

(j) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the applicable Loan Party and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the applicable Loan Party or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the applicable Loan Party or the Agent as may be necessary for the applicable Loan Party and the 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 (j), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding taxes imposed under FATCA, from and after the Closing Date, the Loan Parties and the Agent shall treat (and the Lenders hereby authorize the Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

SECTION 2.15. Sharing of Payments, Etc. Without expanding the rights of any Lender under this Agreement and, except as otherwise expressly provided in Section 6.04, if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Revolving Loans owing to it (other than (x) as payment of a Revolving Loan made by an Issuing Bank pursuant to the first sentence of Section 2.03(c) or (y) pursuant to Section 2.11, 2.14 or 9.04(c)) in excess of its Ratable Share (according to the proportion of (i) the amount of such Revolving Loans due and payable to such Lender at such time to (ii) the aggregate amount of the Revolving Loans due and payable at such time to all Lenders hereunder) of payments on account of the Revolving Loans obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in the Revolving Loans owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such Lender's Ratable Share (according to the proportion of (i) the purchase price paid to such Lender to (ii) the aggregate purchase price paid to all Lenders) of such recovery together with an amount equal to such Lender's Ratable Share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered; provided, further, that, so long as the Revolving Loans shall not have become due and payable pursuant to Section 6.01, any excess payment received by any Lender shall be shared on a pro rata basis only with other Lenders. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.15 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Loan Parties in the amount of such participation.

SECTION 2.16. Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to such Lender resulting from each Revolving Loan owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder in respect of Revolving Loans. Borrower agrees that upon notice by any Lender to Borrower (with a copy of such notice to the Agent) to the effect that a Note is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Revolving Loans owing to, or to be made by, such Lender, Borrower shall promptly execute and deliver to such Lender a Note, as applicable, properly completed, payable to the order of such Lender in a principal amount up to the Revolving Credit Commitment of such Lender.

(b) The Register maintained by the Agent pursuant to Section 9.08(e) shall include a control account, and a subsidiary account for each Lender, in which accounts (taken together) shall be recorded (i) the date and amount of each Borrowing made hereunder, the Type of Revolving Loans comprising such Borrowing and, if appropriate, the Interest Period applicable thereto, (ii) the terms of each Assumption Agreement and each Assignment and Acceptance delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder and (iv) the amount of any sum received by the Agent from each Borrower hereunder and each Lender's share thereof.

(c) Entries made in good faith by the Agent in the Register pursuant to subsection (b) above, and by each Lender in its account or accounts pursuant to subsection (a) above, shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement, absent manifest error; provided, however, that the failure of the Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of Borrower under this Agreement with respect to Revolving Loans made and not repaid.

SECTION 2.17. Use of Proceeds. On the Closing Date, the proceeds of the Revolving Loans and the issuance of Letters of Credit hereunder shall be to pay costs and expenses related to the Closing Date Transactions and thereafter to issue Letters of Credit and finance ongoing working capital needs and general corporate purposes of the Borrower.

SECTION 2.18. Cash Management.

(a) Within sixty (60) days after the Initial Closing Date (or such later date as the Agent may specify in its sole discretion), and at all times thereafter, the Loan Parties shall enter into and maintain Control Agreements, with respect to each Concentration Account.

(b) Each Control Agreement for each Concentration Account shall require, during the continuance of a Cash Control Trigger Event (and delivery of notice thereof from the Agent), the ACH or wire transfer on each Business Day of all ledgers or available, as applicable, cash receipts held in the Concentration Account to a concentration account maintained by the Agent (an "Agent Sweep Account") located in the United States.

(c) If (i) at any time during the continuance of a Cash Control Trigger Event, any cash or Cash Equivalents owned by a Loan Party are deposited in any account (other than an Excluded Account), or held or invested in any manner (other than (w) in an Excluded Account, (x) in a Concentration Account that is subject to the Control Agreement, or (y) in a Deposit Account which is swept daily to a Concentration Account subject to a Control Agreement), or (ii) at any time, a Concentration Account shall cease to be subject to a Control Agreement, the applicable Loan Party shall immediately furnish the Agent with written notice thereof and the Agent may require such Loan Party to close such account and have any such funds transferred to a Concentration Account which is subject to a Control Agreement or maintained with the Agent.

(d) A Loan Party may close any Deposit Account or a Concentration Account, maintain existing Deposit Accounts or Concentration Accounts and/or open new Deposit Accounts or Concentration Accounts, subject to the execution and delivery to the Agent of appropriate Control Agreements with respect to each Concentration Account (except with respect to any Concentration Account maintained with the Agent) consistent with the provisions of this Section 2.18 and otherwise reasonably satisfactory to the Agent. The applicable Loan Party shall furnish the Agent with prior written notice of its intention to open or close a Concentration Account and the Agent shall promptly notify such Loan Party as to whether the Agent shall require a Control Agreement with the Person with whom such account will be maintained.

(e) Each Agent Sweep Account shall at all times be under the sole dominion and control of the Agent. Each Loan Party hereby acknowledges and agrees that (i) it has no right of withdrawal from the Agent Sweep Account until the applicable Cash Control Trigger Event is no longer continuing as set forth in subclause (f), (ii) the funds on deposit in an Agent Sweep Account shall at all times continue to be collateral security for all of the Secured Obligations, and (iii) the funds on deposit in an Agent Sweep Account, shall be applied as provided in Section 2.18(h) of this Agreement and in the Security Agreement. In the event that, notwithstanding the provisions of this Section 2.18, during the continuance of a Cash Control Trigger Event, a Loan Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall promptly be deposited into a Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent (except for (i) funds required to be deposited into an Excluded Account and (ii) funds necessary to fund working capital needs of the Company and its Subsidiaries, which funds will be deposited in an account subject to a Control Agreement in the case of this subclause (ii)).

(f) Any amounts remaining in an Agent Sweep Account (i) at any time when a Cash Control Trigger Event is no longer continuing for purposes of this Agreement or (ii) after application of amounts received in such Agent Sweep Account as set forth in subsection (h) below, shall be remitted to the primary Concentration Account of the Company maintained with the Agent.

(g) The Agent shall promptly (but in any event within two (2) Business Days) furnish written notice to each Person with whom a Concentration Account is maintained when a Cash Control Trigger Event is no longer continuing for purposes of this Agreement.

(h) (i) Any amounts received in an Agent Sweep Account in the United States shall be applied to the payment (without a corresponding reduction of Commitments) of all of the Revolving Loans made to the Borrower (whether then due or not) and to the payment of all of the other Obligations under the Loan Documents of the Loan Parties (other than contingent obligations) (whether then due or not) in accordance with Section 6.04 (with all Revolving Loans deemed due for purposes thereof); (ii) all payments to be made in accordance with this subsection (h) in respect of Term SOFR Revolving Loans shall be made on the last day of the applicable Interest Period therefor, and shall be held in the applicable Agent Sweep Account pending such payment and (iii) any remaining amounts shall be available for use by the Company and its Subsidiaries for additional working capital needs.

(i) The following shall apply to deposits and payments under and pursuant to this Agreement:

(i) funds shall be deemed to have been deposited to an Agent Sweep Account on the Business Day on which deposited, provided, that, such deposit is available to the Agent by 2:00 p.m. on that Business Day (except that if the Obligations are being paid in full, by 2:00 p.m. on that Business Day);

(ii) funds paid to the Agent, other than by deposit to an Agent Sweep Account, shall be deemed to have been received on the Business Day when they are good and collected funds, provided, that, such payment is available to the Agent by 2:00 p.m. on that Business Day (except that if the Obligations are being paid in full, by 2:00 p.m. on that Business Day); and

(iii) if a deposit to an Agent Sweep Account or payment is not available to the Agent until after 2:00 p.m. on a Business Day, such deposit or payment shall be deemed to have been made at 9:00 a.m. on the then next Business Day.

SECTION 2.19. Defaulting Lenders.

(a) In the event that, at any time, (i) any Lender shall be a Defaulting Lender, such Defaulting Lender shall owe a Defaulted Revolving Loan to Borrower and (iii) Borrower shall be required to make any payment hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then Borrower may, to the fullest extent permitted by applicable law, set off and otherwise apply the Obligation of the Borrower to make such payment to or for the account of such Defaulting Lender against the obligation of such Defaulting Lender to make such Defaulted Revolving Loan. In the event that, on any date, Borrower shall so set off and otherwise apply its obligation to make any such payment against the obligation of such Defaulting Lender to make any such Defaulted Revolving Loan on or prior to such date, the amount so set off and otherwise applied by Borrower shall constitute for all purposes of this Agreement and the other Loan Documents a Revolving Loan by such Defaulting Lender made on the date under the Revolving Credit Facility pursuant to which such Defaulted Revolving Loan was originally required to have been made pursuant to Section 2.01. Such Revolving Loan shall be considered, for all purposes of this Agreement, to comprise part of the Borrowing in connection with which such Defaulted Revolving Loan was originally required to have been made pursuant to Section 2.01, even if the other Revolving Loans comprising such Borrowing shall be Term SOFR Revolving Loans on the date such Revolving Loan is deemed to be made pursuant to this subsection (a). Borrower shall notify the Agent at any time Borrower exercises its right of set-off pursuant to this subsection (a) and shall set forth in such notice (A) the name of the Defaulting Lender and the Defaulted Revolving Loan required to be made by such Defaulting Lender and (B) the amount set off and otherwise applied in respect of such Defaulted Revolving Loan pursuant to this subsection (a). Any portion of such payment otherwise required to be made by the Borrower to or for the account of such Defaulting Lender which is paid by the Borrower, after giving effect to the amount set off and otherwise applied by the Borrower pursuant to this subsection (a), shall be applied by the Agent as specified in subsection (b) or (c) of this Section 2.19.

(b) In the event that, at any time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall owe a Defaulted Amount to the Agent or other applicable Lenders and (iii) Borrower shall make any payment hereunder or under any other Loan Document to the Agent for the account of such Defaulting Lender, then the Agent may, on its behalf or on behalf of such other Lenders and to the fullest extent permitted by applicable law, apply at such time the amount so paid by Borrower to or for the account of such Defaulting Lender to the payment of each such Defaulted Amount to the extent required to pay such Defaulted Amount. In the event that the Agent shall so apply any such amount to the payment of any such Defaulted Amount on any date, the amount so applied by the Agent shall constitute for all purposes of this Agreement and the other Loan Documents payment, to such extent, of such Defaulted Amount on such date. Any such amount so applied by the Agent shall be retained by the Agent or distributed by the Agent to such other Lenders, ratably in accordance with the respective portions of such Defaulted Amounts payable at such time to the Agent and such other Lenders and, if the amount of such payment made by Borrower shall at such time be insufficient to pay all Defaulted Amounts owing at such time to the Agent and the other Lenders, in the following order of priority:

(i) *first*, to the Agent for any Defaulted Amount then owing to the Agent in its capacity as Agent; and

(ii) *second*, to the Issuing Banks for any Defaulted Amounts then owing to them, in their capacities as such, ratably in accordance with such respective Defaulted Amounts then owing to the Issuing Banks; and

(iii) *third*, to any other Lenders for any Defaulted Amounts then owing to such other Lenders, ratably in accordance with such respective Defaulted Amounts then owing to such other Lenders.

Any portion of such amount paid by Borrower for the account of such Defaulting Lender remaining, after giving effect to the amount applied by the Agent pursuant to this subsection (b), shall be applied by the Agent as specified in subsection (c) of this Section 2.19.

(c) In the event that, at any time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall not owe a Defaulted Revolving Loan or a Defaulted Amount and (iii) Borrower, the Agent or any other Lender shall be required to pay or distribute any amount hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then Borrower or such other Lender shall pay such amount to the Agent to be held by the Agent, to the fullest extent permitted by applicable law, in escrow or the Agent shall, to the fullest extent permitted by applicable law, hold in escrow such amount otherwise held by it. Any funds held by the Agent in escrow under this subsection (c) shall be deposited by the Agent in an account with the Agent, in the name and under the control of the Agent, but subject to the provisions of this subsection (c). The terms applicable to such account, including the rate of interest payable with respect to the credit balance of such account from time to time, shall be the Agent's standard terms applicable to escrow accounts maintained with it. Any interest credited to such account from time to time shall be held by the Agent in escrow under, and applied by the Agent from time to time in accordance with the provisions of, this subsection (c). The Agent shall, to the fullest extent permitted by applicable law, apply all funds so held in escrow from time to time to the extent necessary to make any Revolving Loans required to be made by such Defaulting Lender and to pay any amount payable by such Defaulting Lender hereunder and under the other Loan Documents to the Agent or any other Lender, as and when such Revolving Loans or amounts are required to be made or paid and, if the amount so held in escrow shall at any time be insufficient to make and pay all such Revolving Loans and amounts required to be made or paid at such time, in the following order of priority:

(i) *first*, to the Agent for any amount then due and payable by such Defaulting Lender to the Agent hereunder in its capacity as Agent;

(ii) *second*, to the Issuing Banks for any amounts then due and payable to them hereunder, in their capacities as such, by such Defaulting Lender, ratably in accordance with such respective amounts then due and payable to the Issuing Banks;

(iii) *third*, to the Agent for any amount then due and payable by such Defaulting Lender in respect of Swingline Loans ratably in accordance with such respective amounts and payable to Agent in respect of Swingline Loans;

(iv) *fourth*, to any other Lenders for any amount then due and payable by such Defaulting Lender to such other Lenders hereunder, ratably in accordance with such respective amounts then due and payable to such other Lenders; and

(v) *fifth*, to the Company, as applicable for any Revolving Loan then required to be made by such Defaulting Lender pursuant to a Commitment of such Defaulting Lender.

In the event that any Lender that is a Defaulting Lender shall, at any time, cease to be a Defaulting Lender, any funds held by the Agent in escrow at such time with respect to such Lender shall be distributed by the Agent to such Lender and applied by such Lender to the Obligations owing to such Lender at such time under this Agreement and the other Loan Documents ratably in accordance with the respective amounts of such Obligations outstanding at such time.

(d) The rights and remedies against a Defaulting Lender under this Section 2.19 are in addition to other rights and remedies that Borrower may have against such Defaulting Lender with respect to any Defaulted Revolving Loan and that the Agent or any Lender may have against such Defaulting Lender with respect to any Defaulted Amount.

(e) Anything contained herein to the contrary notwithstanding, in the event that (i) any Lender shall become a Defaulting Lender and (ii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five (5) Business Days after the Company's request that it cure such default, the Company shall have the right (but not the obligation) to repay such Defaulting Lender in an amount equal to the principal of, and all accrued interest on, all outstanding Revolving Loans owing to such Lender, together with all other amounts due and payable to such Lender under the Loan Documents, and such Lender's Commitment hereunder shall be terminated immediately thereafter.

(f) If any Lender becomes, and during the period it remains, a Defaulting Lender or a Potential Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the "Ratable Share" of each Non-Defaulting Lender under the Revolving Credit Facility shall be computed without giving effect to the Letter of Credit Commitment of that Defaulting Lender; provided, that: (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists; and (ii) the aggregate obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit under the Revolving Credit Facility shall not exceed the positive difference, if any, of (1) the applicable Revolving Credit Commitment of that Non-Defaulting Lender minus (2) the aggregate Revolving Loans of that Lender under such Revolving Credit Facility.

(g) Each Issuing Bank, may, by notice to the Company and such Defaulting Lender or Potential Defaulting Lender through the Agent, require the Borrower to Cash Collateralize the obligations of Borrower to such Issuing Bank in respect of such Letter of Credit in amount at least equal to the aggregate amount of the unallocated obligations (contingent or otherwise) of such Defaulting Lender or such Potential Defaulting Lender in respect thereof, or to make other arrangements satisfactory to the Agent, and to the applicable Issuing Bank, in their sole discretion to protect them against the risk of non-payment by such Defaulting Lender or Potential Defaulting Lender.

(h) If Borrower Cash Collateralizes any portion of a Defaulting Lender's or a Potential Defaulting Lender's exposure with respect to an outstanding Letter of Credit, Borrower shall not be required to pay any fees under Section 2.04(b)(i) to any Defaulting Lender or Potential Defaulting Lender that is a Lender at any time when the Letter of Credit is so Cash Collateralized.

(i) If any Lender becomes, and during the period it remains, a Defaulting Lender or a Potential Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to settle Swingline Loans pursuant to Sections 2.22, the "Ratable Share" of each Non-Defaulting Lender under the Revolving Credit Facility shall be computed without giving effect to such obligation of that Defaulting Lender; provided, that, the aggregate obligation of each Non-Defaulting Lender to settle Swingline Loans shall not exceed the Unused Revolving Credit Commitment of such Non-Defaulting Lender.

SECTION 2.20. Replacement of Certain Lenders. In the event a Lender ("Affected Lender") shall have (i) become a Defaulting Lender under Section 2.19, (ii) requested compensation from the Borrower under Section 2.14 with respect to Taxes or Other Taxes or with respect to increased costs or capital or under Section 2.11 or other additional costs incurred by such Lender which, in any case, are not being incurred generally by the other Lenders, (iii) has not agreed to any consent, waiver or amendment that requires the agreement of all Lenders or all affected Lenders in accordance with the terms of Section 9.01 and as to which the Required Lenders have agreed, or (iv) delivered a notice pursuant to Section 2.12 claiming that such Lender is unable to extend Term SOFR Revolving Loans to the Borrower for reasons not generally applicable to the other Lenders, then, in any case, the Company or the Agent may make written demand on such Affected Lender (with a copy to the Agent in the case of a demand by the Company and a copy to the Company in the case of a demand by the Agent) for the Affected Lender to assign at par, and such Affected Lender shall use commercially reasonable efforts to assign pursuant to one or more duly executed Assignments and Acceptances five (5) Business Days after the date of such demand, to one or more financial institutions that comply with the provisions of Section 9.08 which the Company or the Agent, as the case may be, shall have engaged for such purpose, all of such Affected Lender's rights and obligations under this Agreement and the other Loan Documents (including, without limitation, its Commitment, all Revolving Loans owing to it, all of its participation interests in existing Letters of Credit, and its obligation to participate in additional Letters of Credit hereunder) in accordance with Section 9.08. The Agent is authorized to execute one or more of such Assignments and Acceptances as attorney-in-fact for any Affected Lender failing to execute and deliver the same within five (5) Business Days after the date of such demand. Further, with respect to such assignment, the Affected Lender shall have concurrently received, in cash, all amounts due and owing to the Affected Lender hereunder or under any other Loan Document; provided, that, upon such Affected Lender's replacement, such Affected Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.11, 2.14 and 9.04, as well as to any fees accrued for its account hereunder and not yet paid, and shall continue to be obligated under Section 8.05 with respect to losses, obligations, liabilities, damages, penalties, actions, judgments, costs, expenses or disbursements for matters which occurred prior to the date the Affected Lender is replaced.

SECTION 2.21. Increase in the Aggregate Revolving Credit Commitments.

(a) Borrower may, at any time, and from time to time, by notice to the Agent, request an increase of the Revolving Credit Facility (a "Commitment Increase"), either from existing Lenders or from additional parties approved by the Agent and the Issuing Banks after consultation with the Borrower (such approval not to be unreasonably withheld, delayed or conditioned and to be limited to approval rights that such party would have with respect to an assignment of the loan). Each Commitment Increase shall be for an amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof (or the remainder of such amount so that all such increases equal \$25,000,000), to be effective as of a date that is at least ninety (90) days prior to the Termination Date (the "Increase Date") as specified in the related notice to the Agent; provided, however that (i) in no event shall the aggregate amount of all such Commitment Increases exceed \$25,000,000, (ii) on the date of any request by the Company for a Commitment Increase and on the related Increase Date, no event shall have occurred and be continuing that constitutes a Default, and (iii) the Revolving Credit Commitment of each Lender or Eligible Assignee shall be in an amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(b) If the applicable Lenders and Eligible Assignees that are asked to participate in the Commitment Increase notify the Agent that they are willing to so increase their respective Revolving Credit Commitments by an aggregate amount that exceeds the amount of the requested Commitment Increase, the requested Commitment Increase shall be allocated among such Lenders and Eligible Assignees willing to participate therein in such amounts as are determined by the Company in consultation with the Agent.

(c) On each Increase Date, each party participating in the Commitment Increase that is not an existing Lender (an "Assuming Lender") shall become a Lender party to this Agreement as of such Increase Date and the Revolving Credit Commitment under the Revolving Credit Facility of each existing Lender participating in the Commitment Increase (an "Increasing Lender") shall be increased by the amount allocated to such Lender by Borrower as of such Increase Date; provided, that, (i) the Agent shall have received on or before such Increase Date the following, each dated such date: (A) certified copies of resolutions of the Board of Directors of Borrower or the Executive Committee of such Board approving the Commitment Increase and the corresponding modifications to this Agreement, (B) a customary opinion of counsel for the Borrower in form and substance reasonably satisfactory to the Agent, (C) an assumption agreement from each Assuming Lender, if any, in form and substance satisfactory to the Company and the Agent (each an "Assumption Agreement"), duly executed by such Eligible Assignee, the Agent and the Company, and (D) confirmation from each Increasing Lender of the increase in the amount of its Revolving Credit Commitment under the Revolving Credit Facility in a writing satisfactory to the Company and the Agent; and (ii) there shall have been paid to each Lender providing an additional Commitment in connection with such increase in the Revolving Credit Facility all fees and expenses due and payable to such Person on or before the effectiveness of such increase.

On each Increase Date, upon fulfillment of the conditions set forth in the immediately preceding sentence of this Section 2.21(c), the Agent shall notify the Lenders (including, without limitation, each Assuming Lender) and the Borrower, on or before 1:00 p.m. (New York City time), by telecopier, of the occurrence of the Commitment Increase to be effected on such Increase Date and shall record in the Register the relevant information with respect to each Increasing Lender and each Assuming Lender on such date. Each Increasing Lender and each Assuming Lender shall, before 2:00 p.m. (New York City time) on the Increase Date, make available for the account of its Applicable Lending Office to the Agent at the Agent's Account, in same day funds, in the case of such Assuming Lender, an amount equal to such Assuming Lender's ratable portion of the Borrowings under the Revolving Credit Facility then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments under the Revolving Credit Facility outstanding after giving effect to the relevant Commitment Increase) and, in the case of such Increasing Lender, an amount equal to the excess of (i) such Increasing Lender's ratable portion of the Borrowings under the Revolving Credit Facility then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments under the Revolving Credit Facility outstanding after giving effect to the relevant Commitment Increase) over (ii) such Increasing Lender's ratable portion of the Borrowings under the Revolving Credit Facility then outstanding (calculated based on its Revolving Credit Commitment (without giving effect to the relevant Commitment Increase) as a percentage of the aggregate Revolving Credit Commitments under the Revolving Credit Facility (without giving effect to the relevant Commitment Increase)). After the Agent's receipt of such funds from each such Increasing Lender and each such Assuming Lender, the Agent will promptly thereafter cause to be distributed like funds to the other applicable Lenders for the account of their respective Applicable Lending Offices in an amount to each other applicable Lender such that the aggregate amount of the outstanding Revolving Loans owing to each applicable Lender after giving effect to such distribution equals such Lender's ratable portion of the Borrowings under the Revolving Credit Facility then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments under the Revolving Credit Facility outstanding after giving effect to the relevant Commitment Increase).

(d) In connection with any Commitment Increase, this Agreement and the other Loan Documents may be amended in a writing (which may be executed and delivered by the Borrower and the Agent) to reflect any technical changes necessary to give effect to such increase in accordance with its terms as set forth herein.

SECTION 2.22. Swingline Loans; Settlement.

(a) Each Borrowing of Swingline Loans shall be made upon the Borrower's irrevocable notice to the Agent, which may be given by telephone. Each such notice must be received by the Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$250,000, (ii) all Swingline Loans then outstanding shall not exceed \$10,000,000 and (iii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Agent of a written notice substantially in the form of Exhibit B-2 ("Swingline Loan Notice"). Subject to the terms and conditions hereof, the Agent shall not later than 3:00 p.m. on the borrowing date specified in such Swingline Loan Notice, make the amount of such Swingline Loan available to the Borrower. Swingline Loans shall constitute Revolving Loans for all purposes, except that payments thereon shall be made to the Agent for its own account until Lenders have funded their participations therein as provided below.

(b) Settlement of Revolving Loans, including Swingline Loans, among the Lenders and the Agent shall take place on a date determined from time to time by the Agent (but at least weekly), on a pro rata basis in accordance with a settlement report delivered by the Agent to the Lenders. Between settlement dates, the Agent may in its discretion apply payments on Revolving Loans to Swingline Loans, regardless of any designation by Borrower or any provision herein to the contrary. Each Lender hereby purchases, without recourse or warranty, an undivided pro rata participation in all Swingline Loans outstanding from time to time until settled. If a Swingline Loan cannot be settled among Lenders, whether due to a Loan Party's Insolvency Proceeding or for any other reason, each Lender shall pay the amount of its participation in the Revolving Loan to the Agent, in immediately available funds, within one Business Day after the Agent's request therefor. Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated, an Overadvance exists or the conditions in Article III are satisfied.

SECTION 2.23. Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Revolving Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Agent because the conditions to the applicable Revolving Loan set forth in Article III are not satisfied or waived in accordance with the terms hereof, the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

SECTION 2.24. Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and to make payments are several and not joint. The failure of any Lender to make any Revolving Loan, to fund any such participation or to make any payment on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loan, to purchase its participation or to make its payment hereunder.

SECTION 2.25. Closing Date Transactions. The Lenders party hereto include all of the Lenders under the Existing Credit Agreement immediately prior to execution of this Agreement. The Lenders hereby consent to and approve the execution of this Agreement, the Security Agreement, the amendment and restatement of the Existing Credit Agreement and the transactions contemplated thereby, including the execution and delivery of the Term Loan Intercreditor Agreement and the Letter of Credit Facility Intercreditor Agreement by Agent on behalf of Lenders.

SECTION 2.26. Inability to Determine Rates.

(a) Inability to Determine Rate. If in connection with any request for a Term SOFR Revolving Loan or a conversion to or continuation thereof, as applicable, (a) Agent determines (which determination shall be conclusive absent manifest error) that (i) no Successor Rate has been determined in accordance with Section 2.26(b), and the circumstances under Section 2.26(b)(i) or the Scheduled Unavailability Date has occurred (as applicable), or (ii) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Revolving Loan or in connection with an existing or proposed Base Rate Revolving Loan, or (b) Agent or Required Lenders determine that for any reason Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Revolving Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Agent will promptly so notify Borrower and Lenders. Thereafter, (x) the obligation of Lenders to make, maintain, or convert Base Rate Revolving Loans to, Term SOFR Revolving Loans shall be suspended (to the extent of the affected Term SOFR Revolving Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of Base Rate, the utilization of such component in determining Base Rate shall be suspended, in each case until Agent (or, in the case of a determination by Required Lenders described above, until Agent upon instruction of Required Lenders) revokes such notice. Upon receipt of such notice, (I) Borrower may revoke any pending request for a Borrowing, conversion or continuation of Term SOFR Revolving Loans (to the extent of the affected Term SOFR Revolving Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for Base Rate Revolving Loans, and (II) any outstanding Term SOFR Revolving Loans shall convert to Base Rate Revolving Loans at the end of their respective Interest Periods.

(b) Successor Rates. Notwithstanding anything to the contrary in any Loan Document, if Agent determines (which determination shall be conclusive absent manifest error), or Borrower or Required Lenders notify Agent (with, in the case of the Required Lenders, a copy to Borrower) that Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining one, three and six month interest periods of Term SOFR, including because the Term SOFR Screen Rate is not available or published on a current basis, and such circumstances are unlikely to be temporary; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over Agent, 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 one, three and six month interest periods of Term SOFR or the 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 satisfactory to Agent that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one, three and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, "Scheduled Unavailability Date");

then, on a date and time determined by Agent (any such date, "Term SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any other applicable Loan Document with Daily Simple SOFR plus the SOFR Adjustment, for any payment period for interest calculated that can be determined by Agent, in each case, without any amendment to, or further action or consent of any other party to, any Loan Document ("Successor Rate"). If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (x) if 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 the Successor Rate then in effect, then in each case, Agent and Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for such alternative benchmarks in similar U.S. dollar denominated syndicated credit facilities syndicated and agented in the United States and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for such benchmarks in similar U.S. dollar denominated credit facilities syndicated and agented in the United States, which adjustment or method for calculating such adjustment shall be published on an information service selected by Agent from time to time in its discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a Successor Rate. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after Agent posts such proposed amendment to all Lenders and Borrower unless, prior to such time, Required Lenders deliver to Agent written notice that Required Lenders object to the amendment.

Agent will promptly (in one or more notices) notify Borrower and Lenders of implementation of any Successor Rate. A Successor Rate shall be applied in a manner consistent with market practice; provided, that to the extent market practice is not administratively feasible for Agent, the Successor Rate shall be applied in a manner as otherwise reasonably determined by Agent. Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than the Floor, the Successor Rate will be deemed to be the Floor for all purposes of the Loan Documents.

ARTICLE III CONDITIONS TO EFFECTIVENESS AND LENDING

SECTION 3.01. Conditions Precedent to Effectiveness. This Agreement shall be effective upon the satisfaction or waiver of the following conditions precedent in the determination of Agent:

- (a) The Agent shall have received executed counterparts to this Agreement from the Company, each other Loan Party and each Lender;
- (b) The Agent shall have received the following, each dated as of the Closing Date and in form and substance satisfactory to the Agent:
 - (i) A guarantee and collateral acknowledgement and reaffirmation executed and delivered by each Loan Party,

(ii) Notes to the order of the Lenders to the extent requested by any Lender pursuant to Section 2.16,

(iii) Certified copies of the resolutions of the Board of Directors of each Loan Party approving each Loan Document to which it is a party, and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to each Loan Document to which it is a party,

(iv) A certificate of the secretary or an assistant secretary of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign each Loan Document to which it is or is to be a party and the other documents to be delivered hereunder and thereunder,

(v) Such certificates of good standing (to the extent such concept exists in such jurisdiction) from the applicable secretary of state or similar official of the jurisdiction of organization, formation documents and organizational documents of each Loan Party as the Agent may reasonably require, and such other documents as the Agent may reasonably require to evidence that each Loan Party qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except for such jurisdictions to the extent that the Company reasonably determines the failure to so qualify in such jurisdiction would not reasonably be expected to have a Material Adverse Effect;

(vi) a certificate of the chief financial officer of the Company, in the form attached hereto as Exhibit D,

(vii) Copies of a recent Lien and judgment search in each jurisdiction reasonably requested by the Agent with respect to the Loan Parties,

(viii) A certificate from the Responsible Officer of the Company as to the matters set forth in Sections 3.01(d), 3.01(g) and 3.01(k),

(ix) certificates of insurance with respect to the Loan Parties' property and liability insurance, together with a loss payable endorsement naming the Agent as loss payee; provided that the Agent and the Arrangers acknowledge and confirm they have received the certificates required by this subclause (ix) in form and substance that is reasonably satisfactory,

(x) A customary legal opinion of Sullivan & Cromwell, special counsel for the Company, in form and substance reasonably satisfactory to the Agent, and

(xi) A customary legal opinion of Day Pitney LLP, New Jersey counsel for the Company, in form and substance reasonably satisfactory to the Agent.

(c) The Agent shall have received a Borrowing Base Certificate as of the most recent calendar month-end if the Closing Date is after the 20th day of a month or otherwise as of the end of the second most recent prior calendar month with customary supporting documentation and supplemental reporting to be reasonably agreed by the Agent and the Company.

(d) No material adverse change in the business, operations, financial condition or assets of Loan Parties (taken as a whole) shall have occurred since December 31, 2015.

(e) The Agent and Arrangers, shall have received, in form and substance satisfactory to them, unaudited interim consolidated financial statements of the Company for each quarterly period ended subsequent to the date of the latest financial statements delivered to Arrangers prior to the Closing Date; provided, that, the Agent and the Arrangers acknowledge and confirm they have received the information required by this paragraph in form and substance that is reasonably satisfactory.

(f) Satisfactory evidence that the Company has received all governmental and third party consents and approvals as may be required in connection with the Revolving Credit Facility and the transactions contemplated thereby.

(g) Minimum opening Excess Availability on the Closing Date of not less than \$20,000,000 after the application of proceeds of the initial Revolving Loans and issuance of the initial Letters of Credit and after provision for payment of all fees and expenses of the Closing Date Transactions.

(h) The Lenders shall have received at least three (3) Business Days prior to the Closing Date all documentation and information as is reasonably requested by the Lenders that is required by regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case to the extent requested in writing at least ten (10) Business Days prior to the Closing Date.

(i) All fees and expenses required to be paid under the Loan Documents, the Commitment Letter or the Fee Letters and invoiced at least three (3) Business Days prior to the Closing Date (provided, that, the three (3) Business Day invoice requirement shall not apply to amounts due pursuant to the Fee Letters (other than with respect to out of pocket fees and expenses, including legal fees)) shall have been, or will be paid on the Closing Date or arrangements satisfactory to Agent and the Arrangers have been made with regard to the payment thereof.

(j) All documents and instruments required to create and perfect the Agent's first priority (as to the ABL Priority Collateral) or other priority security interest in and Lien on the Collateral (free and clear of all other Liens other than Permitted Collateral Liens and subject to exceptions permitted by Section 5.02(a)) shall have been executed and delivered and, if applicable, be in proper form for filing.

(k) (i) the representations and warranties of the Borrower and each other Loan Party contained in each Loan Document to which it is a party shall be correct on and as of the Closing Date in all material respects (except to the extent qualified by materiality or "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects), before and after giving effect to the effectiveness of this Agreement and the transactions contemplated hereby, as though made on and as of such date; provided, that, any representation or warranty as of a specific date shall only be true or correct in all material respects as of such date and (ii) no event shall have occurred and be continuing, or would result from the effectiveness of this Agreement or the transactions contemplated hereby, that would constitute a Default.

(l) No Default under the Loan Documents shall exist on the Closing Date.

(m) The Agent shall have received reasonably satisfactory evidence that all Revolving Loans (if any) under and as defined in the Existing Credit Agreement shall be repaid, the commitments of the Non-Consenting Lenders hereunder shall have been terminated pursuant to Section 2.25 (and the Commitments of all continuing and new Lenders shall be as set forth on Schedule I) and all accrued interest and fees under the Existing Credit Agreement shall have been paid, or arrangements satisfactory to the Administrative Agent in respect thereof shall have been made. For the avoidance of doubt, all Letters of Credit outstanding immediately prior to execution of this Agreement shall continue to and remain outstanding.

SECTION 3.02. Conditions Precedent to Each Borrowing and Issuance. The obligation of each Lender to make a Revolving Loan (other than a Revolving Loan made by any Issuing Bank pursuant to Section 2.03(c) or any Lender pursuant to Section 2.03(c)) on the occasion of each Borrowing and the obligation of each Issuing Bank to issue a Letter of Credit shall be subject to the conditions precedent that the Closing Date shall have occurred and on the date of such Borrowing or such Issuance the following statements shall be true (and each of the giving of the applicable Notice of Borrowing, Notice of Issuance and the acceptance by the Borrower of the proceeds of such Borrowing or such Issuance shall constitute a representation and warranty by the Company that on the date of such Borrowing or such Issuance such statements are true):

(a) the representations and warranties of the Borrower and each other Loan Party contained in each Loan Document to which it is a party are correct in all material respects (except to the extent qualified by materiality or "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects) on and as of such date, before and after giving effect to such Borrowing or such Issuance and to the application of the proceeds therefrom, as though made on and as of such date; provided, that, any representation or warranty as of a specific date shall only need be true or correct in all material respects as of such date;

(b) no event has occurred and is continuing, or would result from such Borrowing or such Issuance or from the application of the proceeds therefrom, that constitutes a Default;

(c) no Borrowing Base Deficiency will exist after giving effect to such Borrowing, issuance or renewal and to the application of the proceeds therefrom (other than as permitted by Section 2.01(c) or (d)); and

(d) after giving effect to such Borrowing and issuance, amendment or continuation of a Letter of Credit, the Revolving Credit Facility Usage shall not exceed the lesser of (i) the Borrowing Base or (ii) the aggregate amount of the Revolving Credit Commitments and after the Maturity Date, the aggregate amount of the Extended Revolving Credit Commitments.

SECTION 3.03. Additional Conditions to Issuances. In addition to the other conditions precedent herein set forth, if any Lender becomes, and during the period it remains, a Defaulting Lender or a Potential Defaulting Lender, no Issuing Bank will be required to issue any Letter of Credit or to amend any outstanding Letter of Credit to increase the face amount thereof, alter the drawing terms thereunder or extend the expiry date thereof, unless such Issuing Bank is satisfied that any exposure that would result from a Defaulted Revolving Loan of such Defaulting Lender or Potential Defaulting Lender is eliminated or fully covered by the Commitments of the Non-Defaulting Lenders or by Cash Collateralization or a combination thereof satisfactory to such Issuing Bank.

SECTION 3.04. Determinations Under this Agreement. For purposes of determining compliance with the conditions specified in this Agreement, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Agent responsible for the transactions contemplated by this Agreement shall have received notice from such Lender prior to the date that the Company, by notice to the Lenders, designates as the proposed Closing Date, specifying its objection thereto. The Agent shall promptly notify the Lenders of the occurrence of the Closing Date.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Company. The Company and each other Loan Party represents and warrants (as applicable) as follows:

(a) Each Loan Party is duly organized, validly existing and, to the extent such concept is applicable, in good standing under the laws of the jurisdiction of its organization, except as to any Loan Party, other than the Company, where such failure to be organized, existing or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and is qualified to do business and in good standing as a foreign entity in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect.

(b) The execution, delivery and performance by each Loan Party of each Loan Document to which it is or is to be party, and the consummation of the transactions contemplated hereby and thereby, are within such Loan Party's corporate, limited liability company or partnership powers, as applicable, have been duly authorized by all necessary corporate, limited liability company or partnership action, as applicable, and do not (i) contravene such Loan Party's charter or by-laws, (ii) violate law, rule, regulation (including, without limitation, with respect to the Borrower, Regulation X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award, (iii) conflict with or result in the breach of, or constitute a default or require any payment to be made under, any material contractual restriction, binding on or affecting such Loan Party or (iv) except for the Liens created under the Loan Documents, result in or require the creation or imposition of any Lien upon or with respect to any of the properties of any Loan Party or any of its Restricted Subsidiaries (other than Liens permitted under Section 5.02(a)).

(c) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or any other third party is required for (i) the due execution, delivery, recordation, filing or performance by any Loan Party of any Loan Document to which it is or is to be a party, (ii) other than as set forth in Section 6(m) of the Security Agreement, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (iii) other than in respect of the Specified Collateral as set forth in Section 6(m) of the Security Agreement, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority required thereunder) or (iv) except for any notices that may be required pursuant to any applicable Intercreditor Agreement, the exercise by the Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents.

(d) This Agreement has been, and each other Loan Document when delivered hereunder will have been, duly executed and delivered by each Loan Party party thereto. This Agreement is, and each other Loan Document when delivered hereunder will be, the legal, valid and binding obligation of each Loan Party party thereto enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by general principles of equity, whether enforcement is sought in a proceeding in equity or at law.

(e) The Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as at December 31, 2019, and the related Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the fiscal year then ended, accompanied by an opinion of PricewaterhouseCoopers, LLP, independent public accountants, copies of which have been furnished to each Lender, fairly present, in all material respects, the Consolidated financial condition of the Company and its Consolidated Subsidiaries as at such date and the Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the period ended on such date, all in accordance with GAAP. Since December 31, 2019, there has been no Material Adverse Effect except as disclosed in filings made with, or documents furnished to, the Bankruptcy Court or the Securities and Exchange Commission or as described in any press release, in each case prior to the date of this Agreement.

(f) Other than as disclosed on Schedule 4.01(f), there is no pending or, to the knowledge of the Company, threatened in writing action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, affecting any Loan Party before any court, governmental agency or arbitrator that (i) is reasonably likely to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby.

(g) Neither Borrower nor any other Loan Party is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Revolving Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(h) Neither Borrower nor any other Loan Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

(i) Except as disclosed on Schedule 4.01(i), each Loan Party and each of their respective Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents, technology, know-how and processes necessary for the conduct of its business as currently conducted except for those the failure to own or license which are not reasonably expected to have a Material Adverse Effect (the "Intellectual Property"). To the knowledge of the Company, no claim has been asserted and is pending against any Intellectual Property by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Loan Party know of any valid basis for any such claim, except, in either case, for such claims that in the aggregate are not reasonably expected to have a Material Adverse Effect. The use of such Intellectual Property by the Company and its Subsidiaries and the operation of their businesses does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, are not reasonably expected to have a Material Adverse Effect.

(j) No ERISA Event has occurred or is reasonably expected to occur with respect to any Plan that has resulted in or is reasonably expected to result in a material liability of any Loan Party or any ERISA Affiliate.

(k) Neither any Loan Party nor any ERISA Affiliate has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan that in the aggregate could reasonably be expected to have a Material Adverse Effect.

(l) Neither any Loan Party nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or has been terminated, within the meaning of Title IV of ERISA, or has been determined to be in "endangered" or "critical" status within the meaning of Section 432 of the Code or Section 305 of ERISA, and no such Multiemployer Plan is reasonably expected to be insolvent or to be terminated, within the meaning of Title IV of ERISA or in endangered or critical status.

(m) Except as would not reasonably be expected to result in a Material Adverse Effect, as of the Closing Date, no event comprising (i) the commencement of winding up of the UK Pension Scheme, except pursuant to the KPP Settlement Agreement, (ii) the cessation of participation in the UK Pension Scheme by any Affiliate of the Borrower, except pursuant to the KPP Settlement Agreement, or (iii) the issue of a warning notice by the UK Pensions Regulator that it is considering issuing a financial support direction or contribution notice in relation to the UK Pension Scheme, has occurred, and (to the knowledge of the Borrower or Kodak Limited) the UK Pensions Regulator has not stated any intention to do so.

(n) As of the Closing Date, no Loan Party nor any Affiliate of any Loan Party has incurred any liability to the UK Pension Scheme as a result of ceasing to participate in the UK Pension Scheme and (to the knowledge of the Borrower or Kodak Limited) no Affiliate of any Loan Party has stated any intention to cease to participate in the UK Pension Scheme, except pursuant to the KPP Settlement Agreement.

(o) As of the Closing Date, no Loan Party nor any Affiliate of any Loan Party has been notified by the trustees of the UK Pension Scheme that the UK Pension Scheme is being wound up and (to the knowledge of the Borrower or Kodak Limited) the trustees of the UK Pension Scheme have not stated any intention to do so, except pursuant to the KPP Settlement Agreement.

(p) Except as would not reasonably be expected to result in a Material Adverse Effect or, except pursuant to the KPP Settlement Agreement, as of the Closing Date, the UK Pension Schemes are duly registered for HMRC tax purposes, all material obligations of each Affiliate required to be performed in connection with the UK Pension Schemes and any funding agreements therefor have been performed in a timely fashion; and there are no material outstanding disputes involving the Borrower or any of its Affiliates concerning the UK Pension Schemes.

(q) None of the Loan Parties or their Subsidiaries is a party to or bound by any collective bargaining or similar agreement with any union, labor organization or other bargaining agent except as set forth on Schedule 4.01(g).

(r) Except to the extent the Company or a Subsidiary has set aside on its books adequate reserves in accordance with GAAP, the operations and properties of the Company and each of its Consolidated Subsidiaries comply in all material respects with all applicable Environmental Laws and Environmental Permits, except as could not reasonably be expected to have a Material Adverse Effect, all past non-compliance with such Environmental Laws and Environmental Permits has been or is reasonably expected to be resolved without ongoing obligations or costs that have had or are reasonably expected to have a Material Adverse Effect, and no circumstances exist that are reasonably likely to (A) form the basis of an Environmental Action against the Company or any of its Subsidiaries or any of their properties that is reasonably expected to have a Material Adverse Effect or (B) cause any such property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law that is reasonably expected to have a Material Adverse Effect.

(s) The Company and each of its Subsidiaries has good and marketable fee simple title to or valid leasehold interests in all of the real property owned or leased by the Company or such Subsidiary and good title to all of their personal property, except where the failure to hold such title or leasehold interests, individually or in the aggregate is not reasonably expected to have a Material Adverse Effect. To the knowledge of the Company, the Company and each of its Subsidiaries enjoy peaceful and undisturbed possession under all of their respective leases except where the failure to enjoy such peaceful and undisturbed possession, individually or in the aggregate, is not reasonably expected to have a Material Adverse Effect.

(t) All factual information (other than information of an industry specific or general economic nature), taken as a whole, furnished by or on behalf of the Company, in writing to the Agent, the Arrangers or any Lender on or prior to the Closing Date, for purposes of this Agreement and all other such factual information (other than information of an industry specific or general economic nature), taken as a whole, furnished by the Company in writing to the Agent, the Arrangers or any Lender pursuant to the terms of this Agreement (after the date of this Agreement) will be, true and accurate in all material respects on the date as of which such information is dated or furnished and not incomplete by knowingly omitting to state any material fact necessary to make such information, taken as a whole, not materially misleading at such time, provided, that, with respect to any projected financial information (including the Projections), estimates or other forward-looking statements (collectively, "Forward-Looking Information"), the Company represents only that such information was prepared in good faith based upon assumptions, and subject to such qualifications, believed to be reasonable at the time; provided, it is understood that such Projections are not to be viewed as facts or as a guarantee of performance of achievement of any particular results and that actual results may vary from projected results (many of which factors are beyond the control of the Company and Subsidiaries and their respective officers, representatives and advisors) and that such variances may be material and that no assurance can be given that such Forward-Looking Information will be realized. The information included in the Beneficial Ownership Certification most recently provided to Agent and each Lender is true and complete in all respects.

(u) All filings and other actions necessary to perfect and protect the security interest in the Collateral (other than in respect of the Specified Collateral as set forth in Section 6(m) of the Security Agreement) created under the Collateral Documents have been duly made or taken and are in full force and effect, and the Collateral Documents create in favor of the Agent for the benefit of the Secured Parties a valid and, together with such filings and other actions, perfected except as otherwise provided in the Intercreditor Agreements security interest with the applicable priority in the Collateral (other than the Specified Collateral), securing the payment of the Secured Obligations (as defined in each Security Agreement), and all filings and other actions necessary to perfect and protect such security interest have been duly taken. The Loan Parties are the legal and beneficial owners of the Collateral free and clear of any Lien, except for the liens and security interests created or permitted under the Loan Documents.

(v) The Company, together with its Restricted Subsidiaries, on a Consolidated basis is Solvent.

(w) (i) Set forth on Part A of Schedule II hereto is a complete and accurate list of all direct and indirect Subsidiaries of the Company that are organized under the laws of a state of the United States of America, and (ii) set forth on Part B of Schedule II hereto is a complete and accurate list of all Subsidiaries of Company, showing, in each case, as of the Closing Date (as to each such Subsidiary) the jurisdiction of its formation, the number of shares, membership interests or partnership interests (as applicable) of each class of its equity interests authorized, and the number outstanding, on the Closing Date and the percentage of each such class of its equity interests owned directly by the applicable Loan Party and the number of shares covered by all outstanding options, warrants, rights of conversion or purchase and similar rights at the Closing Date. Except as set forth on Part C of Schedule II hereto, all of the outstanding equity interests in each Loan Party's Subsidiaries have been validly issued, are fully paid and non-assessable and, except as otherwise provided herein, are owned by such Loan Party or one or more of its Subsidiaries, other than director's qualifying shares or similar minority interests required under the laws of the Subsidiary's formation, free and clear of all Liens, except those created under the Collateral Documents or permitted under the Loan Documents.

(x) Part I of Schedule III sets forth all Deposit Accounts that are maintained by the Loan Parties as of the Closing Date, which schedule shall include, with respect to each depository as of the Closing Date (i) the name and address of such depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository. Part II of Schedule III sets forth all lock boxes that are maintained by the Loan Parties as of the Closing Date.

(y) [Reserved].

(z) (i) The Company and its Restricted Subsidiaries have timely filed with the appropriate United States federal, state, local and foreign taxing authorities all federal income tax returns and reports and all other material tax returns and reports that were required to be filed by them and all such tax returns are true and correct in all material respects, (ii) the Company and its Restricted Subsidiaries have timely paid and discharged all taxes owed by them, whether or not shown on such tax returns or reports, and (iii) there is no proposed tax assessment against the Company or any of its Restricted Subsidiaries except, in the cases of clauses (ii) and (iii) of this clause (z), for the payment of any such taxes or any tax assessments which are being actively contested by the Company or such Restricted Subsidiary in good faith and by appropriate proceedings or which have not had, and would not be reasonably expected to have, a Material Adverse Effect; provided, appropriate reserves, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

(aa) Each of the Borrower and its Restricted Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(bb) Neither the advance of the Revolving Loans to the Borrower nor the use of the proceeds of any thereof will violate any Sanction or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order"). Furthermore, neither the Borrower nor any Subsidiary, nor to the knowledge of the Borrower and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof is a Person that is (x) included on OFAC's List of Specifically Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority, (y) operating, organized or resident in a Designated Jurisdiction or (z) controlled by any Person or Persons described in clauses (x) and (y). The Borrower has instituted and maintains in effect policies and procedures designed to promote and achieve compliance by the Borrower, its Subsidiaries and its and their respective directors, officers, employees, agents and affiliates with Sanctions laws and regulations.

(cc) Each Loan Party is in compliance, in all material respects, with the PATRIOT Act. No part of the proceeds of the Revolving Loans will be used by the Borrower or any Subsidiary, directly or, to the knowledge of the Borrower or any Subsidiary, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any Anti-Corruption Law, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended. Each Loan Party is in compliance with Anti-Corruption Laws in all material respects. The Borrower has instituted and maintained in effect policies and procedures designed to promote and achieve compliance by the Borrower, its Subsidiaries and its and their respective directors, officers, employees, agents and affiliates with Anti-Corruption Laws.

(dd) As of the Closing Date and except as set forth on Schedule 4.01(dd), there are no strikes, lockouts or slowdowns against the Borrower or any Restricted Subsidiary pending or, to the knowledge of the Borrower, threatened. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) the Borrower and its Restricted Subsidiaries are in compliance with the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with hours worked by or payments made to employees or any similar matters (including but not limited to the appropriate classification of employees as exempt or non-exempt), (ii) the Borrower and its Restricted Subsidiaries have properly classified all individuals engaged as contractors as such under all applicable Federal, state, local or foreign law, (iii) the Borrower and its Restricted Subsidiaries are in compliance with the Worker Adjustment and Retraining Notification Act and all other state, local or foreign laws relating to plant closings or mass layoffs and (iv) all payments due from the Borrower or any Restricted Subsidiary, or for which any claim may be made against the Borrower or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such Subsidiary. Neither the Borrower nor any Subsidiary is subject to any claims arising out of any employment matter, whether pending as of the Closing Date or to its knowledge threatened, which would, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. Except as does not, or would not reasonably be expected to, have a Material Adverse Effect, the consummation of the Closing Date Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which the Borrower or any Restricted Subsidiary is bound.

(ee) No Loan Party is an EEA Financial Institution.

(ff) No Loan Party is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Revolving Loan proceeds or Letters of Credit will be used by the Company to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

ARTICLE V
COVENANTS OF THE LOAN PARTIES

SECTION 5.01. Affirmative Covenants. So long as any Revolving Loan or any other payment Obligation (other than contingent indemnification obligations not yet due and payable) of any Loan Party under any Loan Document shall remain unpaid, any Letter of Credit is outstanding or any Lender shall have any Commitment hereunder, each Loan Party shall and shall cause each of its Restricted Subsidiaries to:

(a) Compliance with Laws. Comply, and cause each of its Restricted Subsidiaries to comply, in all material respects, with (x) all applicable laws, rules, regulations and orders, such compliance to include, without limitation, compliance with ERISA, Environmental Laws, and the PATRIOT Act, except where such non-compliance is not reasonably expected to have a Material Adverse Effect and (y) Sanctions laws and regulations.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Restricted Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all material lawful claims that, if unpaid, might by law become a Lien upon its property; provided, however, that neither the Company nor any of its Restricted Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors. If an obligation providing the basis for a Lien covered by paragraph (b) of the definition of Permitted Liens is not an obligation of the Company or any of its Restricted Subsidiaries, the Company or any of its Restricted Subsidiaries shall be deemed to be contesting such obligation for purposes of this paragraph 5.01(b) so long as the obligor thereof is contesting such obligation or the Company or any of its Restricted Subsidiaries is using commercially reasonable efforts to contest the Lien or to cause the obligor thereof to satisfy the obligation providing the basis for such Lien; provided, that, neither the Company nor any of its Restricted Subsidiaries shall have any obligation to perform the obligation providing the basis for such Lien.

(c) Maintenance of Insurance. Maintain, and cause each Restricted Subsidiary to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Company or such Restricted Subsidiary operates; provided, however, that the Company and its Restricted Subsidiaries may self-insure to the extent consistent with prudent business practice.

(d) Preservation of Corporate Existence. Preserve and maintain, and cause each of its Restricted Subsidiaries (other than Immaterial Subsidiaries) to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Company and its Restricted Subsidiaries may consummate any amalgamation, merger or consolidation permitted under Section 5.02(b) and provided, further, that neither the Company nor any of its Restricted Subsidiaries shall be required to preserve any right or franchise if the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company or such Restricted Subsidiary, as the case may be, and that the loss thereof is not reasonably expected to have a Material Adverse Effect.

(e) Visitation Rights.

(i) At any reasonable time, on reasonable notice and from time to time, permit the Agent or any of the Lenders (accompanied by the Agent) or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Company and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Company and any of its Subsidiaries with any of their officers or directors and with their independent certified public accountants, provided, that, all such information is subject to the provisions of Section 9.09. At any time prior to the occurrence of a continuing Event of Default, the right of the Agent and any of the Lenders (accompanied by the Agent) to visit the property of the Company and any of its Subsidiaries shall be subject to reasonable rules and restrictions of the Company for such access, and such visit shall not unreasonably interfere with the ongoing conduct of the business of the Company and its Subsidiaries at such properties.

(ii) At any reasonable time and from time to time (except as may be limited by subsections (iii) and (iv) below) during regular business hours, upon reasonable notice, permit the Agent or any of the Lenders (accompanied by the Agent) or any agents or representatives thereof (including any consultants, accountants, lawyers and appraisers retained by the Agent) to visit the properties of the Company and its Subsidiaries to conduct evaluations, appraisals, environmental assessments and ongoing maintenance and monitoring in connection with the Company's computation of the Borrowing Base and the assets included in the Borrowing Base and such other assets and properties of the Company or its Subsidiaries as the Agent may require, and to monitor the Collateral and all related systems.

(iii) Permit the Agent to conduct, at the sole cost and expense of the Company field examinations, provided, that, such examinations may be conducted (a) so long as Excess Availability is greater than or equal to the greater of (i) twelve and one-half percent (12.5%) of the Line Cap and (ii) \$11,250,000, not more than one (1) time per twelve (12) month period, and (b) so long as Excess Availability is less than the greater of (i) twelve and one-half percent (12.5%) of the Line Cap and (ii) \$11,250,000, not more than two (2) times per twelve (12) month period. Notwithstanding the foregoing, following the occurrence and during the continuation of an Event of Default such field examinations may be conducted at the Company's expense as many times as the Agent shall consider reasonably necessary.

(iv) Permit the Agent, to conduct, at the sole cost and expense of the Loan Company: (a) inventory appraisals, provided, that, such appraisals may be conducted (i) so long as Excess Availability is greater than or equal to the greater of (i) twelve and one-half percent (12.5%) of the Line Cap and (ii) \$11,250,000, not more than one (1) time per twelve (12) month period, and (ii) so long as Excess Availability is less than the greater of (i) twelve and one-half percent (12.5%) of the Line Cap and (ii) \$11,250,000, not more than two (2) times per twelve (12) month period and (b) no more than one (1) machinery and equipment appraisal in any consecutive twelve (12) month period. Notwithstanding the foregoing, following the occurrence and during the continuation of an Event of Default such appraisals may be conducted at the Company's expense as many times as the Agent shall consider reasonably necessary.

(f) Keeping of Books. Keep and maintain proper books of record and account on a Consolidated basis for Company and its Subsidiaries in conformity in all material respects with GAAP in effect from time to time.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Restricted Subsidiaries to maintain and preserve in all material respects, all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to so maintain or preserve is not reasonably expected to have a Material Adverse Effect.

(h) Reporting Requirements. Furnish to the Agent and Lenders:

(i) as soon as available and in any event within forty-five (45) days after the end of each of the first three quarters of each fiscal year of the Company, the Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as of the end of such quarter and Consolidated statements of earnings and cash flows of the Company and its Consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified by the chief financial officer of the Company as having been prepared in accordance with GAAP subject to normal year-end audit adjustments and other items, such as footnotes, omitted in interim statements, and concurrently with delivery of financial statements under this clause (i), or more frequently (but no more frequently than monthly) if requested by Agent while a Default or Event of Default exists, a Compliance Certificate executed by the chief financial officer of the Company, which shall include setting forth in reasonable detail the calculations necessary to demonstrate compliance with Section 5.03 (regardless of whether such covenant is then in effect) provided, that, to the extent such financial statements include information regarding Unrestricted Subsidiaries, the Company shall include a note and or notes containing reconciliation statements eliminating all financial information pertaining to Unrestricted Subsidiaries;

(ii) as soon as available and in any event within ninety (90) days after the end of each fiscal year of the Company, a copy of the annual audit report for such year for the Company and its Consolidated Subsidiaries, containing the Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as of the end of such fiscal year and Consolidated statements of earnings and cash flows of the Company and its Consolidated Subsidiaries for such fiscal year, in each case accompanied by an opinion by Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit or other material qualification or exception, except for any such qualification or exception with respect to (i) any Debt maturing within three hundred sixty-four (364) days after the date of such financial statements, (ii) changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent public accountants or (iii) prospective or actual financial covenant breaches; provided, that, for avoidance of doubt, any "explanatory paragraph," "emphasis-of-matter paragraph" or like statement shall not constitute a "going concern" or like qualification or exception for purposes of this paragraph) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its Consolidated Subsidiaries on a Consolidated basis, and certificates of a Responsible Officer of the Company as to compliance with the terms of this Agreement and setting forth in reasonable detail the calculations necessary to demonstrate compliance with Section 5.03 (regardless of whether such covenant is then in effect); provided, that, to the extent such financial statements include information regarding Unrestricted Subsidiaries, the Company shall include a note and or notes containing reconciliation statements eliminating all financial information pertaining to Unrestricted Subsidiaries;

(iii) as soon as possible and in any event within five (5) days after the Company has knowledge of the occurrence of each Default continuing on the date of such statement, a statement of a Responsible Officer of the Company setting forth details of such Default and the action that the Company has taken and/or proposes to take with respect thereto;

(iv) promptly after the same become publicly available, copies of all reports that the Company sends to any of its stockholders generally, and copies of all reports and registration statements that the Company or any Subsidiary files with the Securities and Exchange Commission or any national securities exchange;

(v) notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Company or any of its Subsidiaries of the type which would have been required to be disclosed under Section 4.01(f), promptly after the later of the commencement thereof or knowledge that such actions or proceedings are reasonably likely to be of a type which would have been required to be disclosed under Section 4.01(f);

(vi) as soon as available and in any event no later than ninety (90) days after the end of each fiscal year, amended or supplemented Schedules setting forth such information as would be required to make the representations set forth in Section 6(a), (f), (g), (k), (l), (o) and (s)(iii) of the Security Agreement true and correct as if the Schedules referenced therein were delivered on such date;

(vii) as soon as available and in any event no later than twenty-one (21) days after the end of each month, and more frequently as the Agent may reasonably request (to the extent available) during a Cash Control Trigger Event, (A) inventory reports, agings of accounts receivable, agings of accounts payable, and reports with respect to US Cash, a roll-forward of accounts, and (B) such other information with respect to the Company or any of its Restricted Subsidiaries, as the Agent may from time to time reasonably request;

(viii) as soon as available, and in any event no later than ninety (90) days after the end of each fiscal year of the Company, a reasonably detailed consolidated budget of the Company and its Consolidated Subsidiaries for the fiscal year immediately following such fiscal year on a quarterly basis, and for each year thereafter through the Extended Maturity Date on an annual basis (including a projected Consolidated balance sheet of the Company and its Consolidated Subsidiaries as of the end of the following fiscal year), the related projected Consolidated statements of cash flow and income for such fiscal year and the projected Excess Availability (detailing the respective Borrowing Bases and the amount of aggregate Revolving Loans) expected as of the end of each month during such fiscal year (collectively, the "Projections"), which Projections shall be accompanied by a certificate of a Responsible Officer of the Company stating that such Projections are based on then reasonable estimates and then available information and assumptions; it being understood that the Projections are made on the basis of the Company's then current good faith views and assumptions believed to be reasonable when made with respect to future events, and assumptions that the Company believes to be reasonable as of the date thereof and further being understood that projections, including the Projections, are subject to significant uncertainties and contingencies, many of which are beyond the Company's control, inherently unreliable and that actual performance may differ materially from the Projections and no assurance is given by the delivery of such Projections or otherwise that the Projections will be realized;

(ix) a Borrowing Base Certificate substantially in the form of Exhibit F as of the date required to be delivered or so requested, in each case with supporting documentation (including, without limitation, the documentation described in Schedule 1 to Exhibit F) shall be furnished to the Agent: (A) on or before the 21st day following the end of each fiscal month, which monthly Borrowing Base Certificate shall reflect the Collateral contained in the Borrowing Base updated as of the end of each such month; (B) in addition to such monthly Borrowing Base Certificates, upon the occurrence and continuance of an Event of Default or if Excess Availability is less than twelve and one-half percent (12.5%) of the Revolving Credit Facility, then bi-monthly on or before the third (3rd) Business Day following the fifteenth day of each month and the third (3rd) Business Day following the last day of each month, each of which bi-monthly Borrowing Base Certificates shall reflect the Collateral included in the Borrowing Base updated as of the immediately preceding fourteen (14) days; provided, that, if Excess Availability is equal to or greater than twelve and one-half percent (12.5%) of the Revolving Credit Facility for thirty (30) consecutive days, such Borrowing Base Certificate shall be delivered pursuant to clause (A) herein; and (C) if requested by the Agent at any other time when the Agent reasonably believes that the then existing Borrowing Base Certificate is materially inaccurate, as soon as reasonably available after such request; in each case with supporting documentation as the Agent may reasonably request (including, without limitation, the documentation described on Schedule 1 to Exhibit F).

(x) Promptly and in any event within twenty (20) days after any Loan Party or any ERISA Affiliate (A) knows or has reason to know that any ERISA Event has occurred, a statement of a Responsible Officer of such Loan Party describing such ERISA Event and the action, if any, that such Loan Party or such ERISA Affiliate has taken and proposes to take with respect thereto and (B) furnishes any records, documents or other information to the PBGC with respect to any Plan pursuant to Section 4010 of ERISA.

(xi) Promptly and in any event within two (2) business days after receipt thereof by any Loan Party, copies of each notice from the PBGC or other governmental or regulatory authority stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan.

(xii) Promptly and in any event within five (5) Business Days after receipt thereof by any Loan Party or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (A) the imposition of Withdrawal Liability by any such Multiemployer Plan, (B) the termination, within the meaning of Title IV of ERISA, of any such Multiemployer Plan or (C) the amount of liability incurred, or that may be incurred, by such Loan Party or any ERISA Affiliate in connection with any event described in clause (A) or (B).

(xiii) Except to the extent prohibited by the Pensions Act 2004, promptly and in any event within three (3) Business Days after a Responsible Officer of the Borrower or Kodak Limited knows or has reason to know that (A) the UK Pension Scheme has commenced winding up, (B) the UK Pensions Regulator has issued a warning notice that it is considering issuing a financial support direction or contribution notice to the Borrower or any of its Affiliates in relation to the UK Pension Scheme or (C) the Borrower or any of its Affiliates which currently participates in the UK Pension Scheme has ceased to participate and thus triggered a liability on its cessation of participation, a statement of a Responsible Officer of the Borrower (or, if applicable, cause to be furnished to the Lenders a statement of a Responsible Officer of Kodak Limited) noting such event and the action, if any, which is proposed to be taken with respect thereto.

(xiv) Notice of the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against any Loan Party with respect to the Chapter 11 Plan or the Confirmation Order, promptly after the commencement thereof.

(xv) Promptly upon the effectiveness thereof, copies of any amendment, supplement, waiver or other modification with respect to any of the Term Loan Documents, Convertible Note Documents, Series B Preferred Stock or Series C Preferred Stock.

Documents required to be delivered pursuant to Section 5.01(h)(i), (ii) and (iv) (to the extent any such documents are included in materials otherwise filed with or furnished to the Securities Exchange Commission), shall be deemed to have been delivered on the date (i) on which the Company provides such documents to the Agent, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 9.02; or (ii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided, that, upon written reasonable request of the Agent, the Company shall deliver paper copies of such documents to the Agent until a written request to cease delivering paper copies is given by the Agent and (B) the Company shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request by a Lender for delivery, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Agent and maintaining its copies of such documents.

Each Loan Party hereby acknowledges that (a) the Agent and the Arrangers will make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Loan Party Materials") by posting the Loan Party Materials on IntraLinks or another similar electronic 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 the Company 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. Each Loan Party hereby agrees that it will use commercially reasonable efforts to identify that portion of the Loan Party Materials that may be distributed to the Public Lenders and that (w) all such Loan Party Materials 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 Loan Party Materials "PUBLIC", the Loan Parties shall be deemed to have authorized the Agent, and the Arrangers, the Issuing Banks and the Lenders to treat such Loan Party Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Company or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Loan Party Materials constitute Borrower Information, they shall be treated as set forth in Section 9.09); (y) all Loan Party Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Agent and the Arrangers shall be entitled to treat any Loan Party Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information". Notwithstanding the foregoing, the Loan Parties shall be under no obligation to mark any Loan Party Materials "PUBLIC".

(i) Covenant to Guarantee Obligations and Give Security. Upon the formation or acquisition after the Closing Date of (1) any Subsidiaries other than Excluded Subsidiaries, or (2) the acquisition of any property by any Loan Party, and such property, in the judgment of the Agent (as to which judgment the Agent has given notice to the Company (such notice, a "Request")), shall not already be subject (other than in respect of the Specified Collateral) to a perfected first priority, as to the ABL Priority Collateral, security interest in favor of the Agent for the benefit of the Secured Parties, then in each case at the Company's expense:

(i) in connection with the formation or acquisition of a Subsidiary other than an Excluded Subsidiary within thirty (30) days after such formation or acquisition, cause each such Subsidiary, to duly execute and deliver to the Agent a guaranty supplement, in the form of Exhibit E hereto, guaranteeing the Guaranteed Obligations,

(ii) within forty-five (45) days or, in the case of any item that would constitute Term Priority Collateral, within the time periods set forth in the Term Loan Documents or otherwise agreed by the Term Loan Agent (but in no event more than sixty (60) days), after (A) such Request or acquisition of property by any Loan Party, duly execute and deliver, and cause each Loan Party to duly execute and deliver, to the Agent such additional pledges, assignments (it being understood that, to the extent the applicable Collateral constitutes Term Loan Priority Collateral (as defined in the Term Loan Intercreditor Agreement), physical delivery of control thereof by the Agent shall not be required so long as such Collateral is delivered to, or under the control of, the Term Loan Agent in accordance with the Term Loan Intercreditor Agreement), security agreement supplements, intellectual property security agreement supplements and other security agreements as specified by, and in form and substance reasonably satisfactory to, the Agent, securing payment of all of the Guaranteed Obligations of such Loan Party and constituting Liens on all such properties and (B) such formation or acquisition of any such Subsidiary other than (x) an Immaterial Subsidiary or (y) a Foreign Subsidiary that is not a Material First-Tier Foreign Subsidiary of the Company, duly execute and deliver and cause each Loan Party acquiring equity interests in such Subsidiary to duly execute and deliver to the Agent pledges, assignments and security agreement supplements related to such equity interests as specified by, and in form and substance satisfactory to, the Agent, securing payment of all of the Guaranteed Obligations of such Loan Party, provided, that, if such new property is equity interests in a CFC, no more than sixty-five percent (65%) of the voting equity interests in any such CFC shall be required to be so pledged; provided, further, that no Foreign Subsidiary will be subject to local pledge perfection if in the applicable foreign jurisdiction such Foreign Subsidiary would have to consult a works council in order to perfect the pledge),

(iii) within sixty (60) days after such Request, formation or acquisition, take, and cause each Loan Party to take, whatever action (including, without limitation, the filing of UCC financing statements (or similar registrations or filings), the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Agent to vest in the Agent (or in any representative of the Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements delivered pursuant to this Section 5.01(i), enforceable against all third parties in accordance with their terms (other than in respect of the Specified Collateral as set forth in Section 6(m) of the Security Agreement),

(iv) within sixty (60) days after such Request, formation or acquisition, deliver to the Agent, upon the request of the Agent in its sole discretion, a signed copy of one or more favorable opinions, addressed to the Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Agent as to (1) such guaranties, guaranty supplements, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements described in clauses (i), (ii) and (iii) above being legal, valid and binding obligations of each Loan Party thereto enforceable in accordance with their terms and as to the matters contained in clause (iii) above, subject to customary exceptions, (2) such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such assets, and (3) such other matters as the Agent may reasonably request, consistent with the opinions delivered on the Closing Date (to the extent applicable).

(v) at any time and from time to time, promptly execute and deliver, and cause each Loan Party and each Restricted Subsidiary other than an Excluded Subsidiary to execute and deliver, any and all further instruments and documents and take, and cause such Subsidiary to take, all such other action as the Agent may deem reasonably necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements to the extent required by this Section 5.01(i) and the applicable Collateral Documents.

Notwithstanding the foregoing, (i) the Borrower shall have no obligation to provide in favor of the Secured Parties perfected security interests in any real property held by the Borrower or its Subsidiaries and (ii) the Agent may waive, modify or extend any of the periods or other requirements set out herein.

(j) Further Assurances.

(i) Promptly upon the reasonable request by the Agent, or any Lender through the Agent, correct, and cause each of the other Loan Parties promptly to correct, any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and

(ii) Promptly upon the reasonable request by the Agent, or any Lender through the Agent, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, pledge agreements, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as the Agent, or any Lender through the Agent, may reasonably require from time to time in order to (A) carry out more effectively the purposes of the Loan Documents, (B) to the fullest extent permitted by applicable law and the terms of this Agreement and the Collateral Documents, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (C) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (D) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries formed or acquired after the Closing Date is or is to be a party, and cause each of its Subsidiaries to do so. Notwithstanding anything to the contrary contained herein, Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has completed its Patriot Act searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be satisfactory to Agent.

(k) Transactions with Affiliates. Conduct, and cause each of its Restricted Subsidiaries to conduct, all transactions in which the fair market value of the transaction is in excess of \$5,000,000 that are otherwise permitted under this Agreement with any of their Affiliates on terms that are fair and reasonable and no less favorable to the Company or such Restricted Subsidiary than it would obtain in a comparable arm's-length transaction (determined in the reasonable judgment of the Company) with a Person not an Affiliate (it being agreed that such condition may be satisfied by the Company's or such Restricted Subsidiary's obtaining a "fairness" opinion from a nationally recognized investment bank or accounting firm or other person reasonably acceptable to the Agent but the Company or such Restricted Subsidiary is not obligated to so obtain a "fairness" opinion), other than, (i) transactions between or among the Company and its Restricted Subsidiaries and not involving any other Affiliate, (ii) transactions, arrangements, fee reimbursements and indemnities specifically and expressly permitted or required under this Agreement, (iii) the consummation of the Initial Closing Date Transactions and the Closing Date Transactions, (iv) Restricted Payments and payments permitted under Section 5.02(h), (v) employment and severance arrangements between the Company and its Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and arrangements in the ordinary course of business, (vi) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of the Company and its Restricted Subsidiaries (or any direct or indirect parent of the Company) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries, (vii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 5.01(k) or any amendment thereto to the extent such an amendment is not materially adverse to the Lenders, (viii) transactions with a Person who was not an Affiliate immediately before the consummation of such transaction that becomes an Affiliate as a result of such transaction and (ix) transactions entered into in the ordinary course of business, including, but not limited to, transactions with licensors, suppliers or other purchasers or sales of goods or services (including any intellectual property).

(l) Maintenance of Cash Management System. (i) Establish and maintain a cash management system on the terms set forth in Section 2.18 and (ii) continue to maintain one or more Concentration Accounts to be used by Borrower as its principal concentration account for day-to-day operations conducted by Borrower.

(m) Foreign Security Interests. (i) Prior to the Amendment No. 2 Effective Date, within the time periods set forth on Schedule 5.01(m) (or such longer time as may be reasonably agreed by the Agent), the Loan Parties shall have executed and delivered to the Agent all documents and instruments required to create and perfect the Agent's third priority (to the extent applicable) security interest in the Collateral consisting of the capital stock of those Subsidiaries listed on Schedule 5.01(m) in the applicable foreign jurisdictions, free and clear of all other liens, subject to exceptions permitted hereunder and subject as to priority to the security interests securing the obligations in respect of the Term Loan Debt or any Debt constituting a Permitted Refinancing thereof and (ii) on and after the Amendment No. 2 Effective Date, within thirty (30) days after the Amendment No. 2 Effective Date (or such longer time as may be reasonably agreed by the Agent), the Loan Parties shall have executed and delivered to the Agent all documents and instruments required to create and perfect the Agent's first priority (to the extent applicable) security interest in the Collateral consisting of the capital stock of those Subsidiaries listed on Schedule 5.01(m) in the applicable foreign jurisdictions, free and clear of all other liens, subject to exceptions permitted hereunder; provided, that, in each case of clauses (i) and (ii) above, if the burden of obtaining any such pledge outweighs the benefit afforded thereby, the Agent may agree not to require the pledge of such stock by any Loan Party.

(n) Administration of Accounts and Inventory. Each Loan Party shall keep accurate and complete records of its Accounts, including all payments and collections thereon and, subject to any other provision of this Section 5.01 with respect to the obligations of any Loan Party to provide information or reports to the Agent or the Lenders (A) each Loan Party shall submit to the Agent sales, collection, reconciliation and other reports in form reasonably satisfactory to the Agent, on such periodic basis (not more than quarterly) as the Agent may reasonably request and (B) the Company shall provide to the Agent, upon the Agent's request, a detailed aged trial balance of all Accounts as of the end of the preceding month, specifying each Account's Account Debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as the Agent may reasonably request. If Accounts in an aggregate face amount of \$10,000,000 or more cease to be Eligible Receivables, the Company shall notify the Agent of such occurrence promptly (and in any event within three (3) Business Days) after any Loan Party has knowledge thereof).

(ii) If an Account of any Loan Party includes a charge for any taxes, the Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Loan Party if such Loan Party does not do so and to charge the Borrower therefor; provided, however, that neither the Agent nor the Lenders shall be liable for any taxes that may be due from the Loan Parties or with respect to any Collateral.

(iii) Whether or not an Event of Default or a Cash Control Trigger Event exists, the Agent shall have the right at any time, in the name of the Agent, any designee of the Agent or any Loan Party, to verify the validity, amount or any other matter relating to any Accounts of the Loan Party by mail, telephone or otherwise. The Loan Parties shall cooperate fully with the Agent in an effort to facilitate and promptly conclude any such verification process.

(iv) Each Loan Party shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and, subject to any other provision of this Section 5.01 with respect to the obligations of any Loan Party to provide information and reports to the Agent or any Lender (A) shall submit to the Agent inventory and reconciliation reports in form reasonably satisfactory to the Agent, on such periodic basis as the Agent may request and (B) conduct a physical inventory at least once per calendar year (and on a more frequent basis if requested by the Agent when an Event of Default exists and is continuing) or periodic cycle counts consistent with historical practices, and shall provide to the Agent a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as the Agent may reasonably request. Upon request by the Agent, the Agent may participate in and observe any such physical count.

(v) No Loan Party shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (A) such return is in the ordinary course of business; (B) no Default exists or would result therefrom; and (C) the Agent is promptly notified if the aggregate value of all Inventory returned in any month exceeds \$10,000,000.

(o) Benefit Plans Payments. The Borrower, the Restricted Subsidiaries and all ERISA Affiliates shall make all required contributions to any Plans, Single Employer Plans or Multiemployer Plans which, if not made, would reasonably be expected to result in a Material Adverse Effect, unless such payment is being contested pursuant to Section 5.01(b).

(p) Lender Meetings. The Borrower will, upon the request of the Agent or the Required Lenders, participate in one teleconference with the Agent and the Lenders during each fiscal quarter (or, for so long as an Event of Default is continuing, more frequent teleconferences as the Agent may reasonably request) during normal business hours at such time as may be mutually agreed to by the Borrower and the Agent.

(q) Environmental Matters. Without limitation of any other covenants, rights or other obligations expressed elsewhere in this Agreement:

(i) Each Loan Party will, and will cause each of its Restricted Subsidiaries, to take all reasonable actions required under Environmental Laws to (A) the extent it has knowledge thereof, cure any violation of applicable Environmental Laws by any Loan Party or its Restricted Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (B) make an appropriate response to any claim, suit or proceeding against any Loan Party or any of its Restricted Subsidiaries asserting any Environmental Liability (in each case to the extent such Loan Party has knowledge of such claim, suit or proceeding) and discharge any obligations it may have to any Person thereunder, where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (C) implement any and all Remedial Actions required to comply with Environmental Laws or that are legally required by any Governmental Authority acting within its jurisdiction (following final resolution of the Loan Party's or its Restricted Subsidiaries' challenges or appeals, if any, of the relevant Governmental Authority's order or decision) or that are otherwise necessary to maintain the value and marketability of its owned or leased Real Estate for industrial usage, except where failure to perform any such Remedial Action would not reasonably be expected to result in a Material Adverse Effect.

(ii) Promptly upon obtaining knowledge of the occurrence thereof, the Borrower shall deliver to the Agent written notice describing in reasonable detail (A) any Release that would reasonably be expected to require a Remedial Action or give rise to Environmental Liability, in each case that would reasonably be expected to result in a Material Adverse Effect, (B) any Remedial Action by any Loan Party, its Restricted Subsidiaries or any other Person in response to the presence or Release of Hazardous Materials that would reasonably be expected to result in Environmental Liability of any Loan Party or its Restricted Subsidiaries that would be reasonably expected to result in a Material Adverse Effect, (C) any claim, demand, suit or proceeding (including any request for information by a Governmental Authority) that would reasonably be expected to result in Environmental Liability of any Loan Party or its Restricted Subsidiaries that would reasonably be expected to result in a Material Adverse Effect, (D) any Loan Party or its Restricted Subsidiaries' discovery of any occurrence or condition at any of its owned or leased Real Estate, or on any adjoining Real Estate, that would reasonably be expected to cause such owned or leased Real Estate or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof or any lien in favor of any Governmental Authority to secure the satisfaction of any liability under any Environmental Laws that, in each case, would reasonably be expected to result in a Material Adverse Effect, (E) any proposed acquisition of equity interests, assets or property by any Loan Party or any of its Restricted Subsidiaries that would reasonably be expected to expose any Loan Party or any of its Restricted Subsidiaries to, or result in, Environmental Liability that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (F) any proposed action to be taken by any Loan Party or any of its Restricted Subsidiaries to modify current operations in a manner that would reasonably be expected to subject any Loan Party or any of its Restricted Subsidiaries to additional obligations or requirements under Environmental Laws that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(r) Post Closing Covenants.

(i) Issue at least \$100,000,000 in aggregate original face amount of Series C Preferred Stock on or prior to April 12, 2021; provided, that, (A) such date shall be automatically extended until such time as the Borrower and the investors in such Series C Preferred Stock shall have made all filings required to be made pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and all waiting periods (and all extensions thereof) applicable to the issuance of such Series C Preferred Stock shall have been terminated or shall have expired and any required approvals or consents under the HSR Act have been obtained, and (B) Borrower shall promptly make all filings required to be made pursuant to the HSR Act and diligently and in good faith take all actions required to terminate any waiting periods and obtain any required approvals or consents under the HSR Act in connection with the Series C Preferred Stock Issuance, and

(ii) Comply, and cause its Subsidiaries to comply, with the obligations set forth in Schedule 5.01(r).

SECTION 5.02. Negative Covenants. So long as any Revolving Loan or any other payment Obligation (other than contingent indemnification obligations not yet due and payable of any Loan Party under any Loan Document) shall remain unpaid, any Letter of Credit is outstanding or any Lender shall have any Commitment hereunder, the Company shall not and shall cause each of its Restricted Subsidiaries not to:

(a) Liens. Create or suffer to exist, or permit any of its respective Restricted Subsidiaries to create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, other than the following, provided, that, any Lien permitted by any clause below shall be permitted under this Section 5.02(a), notwithstanding that such Lien would not be permitted by any other clause:

(i) Permitted Liens,

(ii) Liens created under the Loan Documents,

(iii) Liens on assets (other than Accounts and Inventory) to secure Debt permitted to be incurred under Section 5.02(d)(iii), (iv) and (xv) hereof,

(iv) the Liens existing on the Closing Date and described on Schedule 5.02(a); provided, that, (A) such Liens shall not apply to any other property or asset of the Company or any Restricted Subsidiary (other than proceeds thereof and extensions or improvements to any such property) unless otherwise permitted herein and (B) such Lien shall secure only those obligations which it secures on the Closing Date and extensions, refinancings, restructurings, renewals and replacements thereof that do not increase the outstanding principal amount thereof (other than by an amount equal to accrued interest and any fees, costs and expenses incurred in connection therewith), the obligations thereunder or the property or assets securing such obligations, in the case of each of subclauses (A) and (B) above other than to the extent such Lien constitutes a Permitted Lien;

(v) Liens on property of a Person existing at the time such Person is acquired by, amalgamated, merged into or consolidated with any Loan Party or any Restricted Subsidiary of a Loan Party or becomes a Restricted Subsidiary of any Loan Party; provided, that, such Liens were not created in contemplation of such amalgamation, merger, consolidation or acquisition and do not extend to any assets other than those of the Person so merged or amalgamated into or consolidated with the Company or such Subsidiary or acquired by any Loan Party or such Restricted Subsidiary (or in the case of Permitted Refinancing Debt, any extensions or amounts then outstanding),

(vi) Liens on property other than ABL Priority Collateral arising under leases that have been or should be, in accordance with GAAP, recorded as capital leases; provided, that, the aggregate principal amount of the Debt secured by the Liens referred to in this clause (vi) are permitted under the terms of this Agreement,

(vii) Liens on assets of Foreign Subsidiaries which secure Debt permitted under Section 5.02(d)(xvii), in an aggregate amount not to exceed \$100,000,000 at any time outstanding,

(viii) Liens on property other than ABL Priority Collateral that secure Debt permitted by Section 5.02(d)(xi),

(ix) [Reserved],

(x) Liens upon real property of the Company and its Restricted Subsidiaries and related assets customary for non-recourse mortgage financings (provided, that, in no event shall any such Lien extend to or cover any Collateral included in the Borrowing Base) securing Debt incurred solely through the financing of such real property, and the replacement, extension or renewal of any such Lien upon or in the same real property or assets in connection with a Permitted Refinancing of the Debt secured thereby,

(xi) Liens in respect of judgments that do not constitute an Event of Default under Section 6.01(f),

(xii) Liens on the property of the Loan Parties securing Term Loan Debt permitted under Section 5.02(d)(xxvii), subject to the terms of the Term Loan Intercreditor Agreement,

(xiii) Liens on assets of the Company and its Subsidiaries not constituting Collateral which secure Debt in an aggregate amount not to exceed \$150,000,000,

(xiv) Liens in favor of collecting or payor banks having a right of setoff, revocation, refund or chargeback with respect to money or instruments of the Company or any Restricted Subsidiary thereof on cash on deposit with or in possession of such bank,

(xv) (i) cash deposits in the ordinary course of business to secure liability to insurance carriers and (ii) Liens in insurance policies and proceeds thereof securing the financing of the premiums with respect thereto,

(xvi) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in respect of any Permitted Acquisition,

(xvii) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii) (A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation,

(xviii) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code (or equivalent statutes) on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage amounts incurred in the ordinary course of business; provided, that, such Liens (A) attach only to such investments and the proceeds therefrom and (B) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or Disposition of such investments and not any obligation in connection with margin financing; and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of setoff) and which are within the general parameters customary in the banking industry,

(xix) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted hereunder, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted hereunder, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien,

(xx) with respect to the equity interests of any non-wholly owned Restricted Subsidiary, non-wholly owned Unrestricted Subsidiary or joint venture, any put and call arrangements or restrictions on disposition related to such equity interests set forth in the applicable organizational documents or any related joint venture or similar agreement,

(xxi) rights of setoff in favor of counterparties to contractual obligations with the Loan Parties in the ordinary course of business,

(xxii) Liens arising out of conditional sale, title retention, consignment or other similar arrangements for the sale of goods entered into by any Loan Party or any of its Restricted Subsidiaries in the ordinary course of business;

(xxiii) Liens upon specified items of inventory or other goods and proceeds of the Company or any of its Restricted Subsidiaries securing such Persons' obligations in respect of related documentary letters of credit or bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(xxiv) Liens over any assets of any Subsidiary that is not a Loan Party or a Restricted Subsidiary to the extent required to provide collateral in respect of any appeal of any tax litigation in an aggregate amount not to exceed the amount required to be paid under local law to permit such appeal,

(xxv) Liens on assets other than ABL Priority Collateral to secure obligations under treasury services agreements or to implement cash pooling arrangements in the ordinary course of business,

(xxvi) Liens on cash and Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Debt, to the extent such defeasance, discharge or redemption is otherwise permitted hereunder,

(xxvii) Liens on assets of the Company or any Restricted Subsidiary in favor of a Loan Party, subject to the terms of the Security Agreement,

(xxviii) Liens on the property of the Loan Parties securing Supplemental Letter of Credit Facility Debt permitted under Section 5.02(d)(xxviii), subject to the terms of the Supplemental Letter of Credit Facility Intercreditor Agreement,

(xxix) Reservation of title by sellers of goods to any Loan Party arising under the provisions of applicable law similar to Article 2 of the UCC in the ordinary course of business, covering only those goods,

(xxx) Liens on Accounts, agreements governing receivables, rights under any such agreements and the proceeds thereof, in each case, of Foreign Subsidiaries to secure Debt in respect of Permitted Receivables Financings of Foreign Subsidiaries but only to the extent such Accounts are the subject of those financings; and

(xxxi) other Liens on assets of the Company or any Restricted Subsidiary (other than ABL Priority Collateral) securing obligations of the Company or any Restricted Subsidiary in an aggregate amount not to exceed \$35,000,000.

(b) Mergers. Merge, amalgamate or consolidate with or into any Person, or permit any of its Restricted Subsidiaries (other than Immaterial Subsidiaries) to do so, provided, that, notwithstanding the foregoing (i) any Restricted Subsidiary of the Company that is a Loan Party may merge, amalgamate or consolidate with or into the Company (subject to clause (iv) below) or any other Loan Party, (ii) any Restricted Subsidiary of the Company that is not a Loan Party may merge, amalgamate or consolidate with or into the Company or any other Subsidiary of the Company, (iii) any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person so long as such Restricted Subsidiary is the surviving or continuing corporation or a Person which shall become a Restricted Subsidiary substantially contemporaneously with such merger, amalgamation or consolidation is the surviving person (provided, that, if any such Person is a Loan Party, the surviving or continuing entity shall be a Loan Party or a Person which shall become a Loan Party substantially contemporaneously with such merger, amalgamation or consolidation), (iv) the Company may merge, amalgamate or consolidate with any other Person so long as the Company is the surviving corporation; provided, in each case, that no Event of Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

(c) Accounting Changes. Make or permit, or permit any of its Restricted Subsidiaries to make or permit, any change in accounting policies or reporting practices, except as required or permitted by GAAP.

(d) Debt. Create or suffer to exist, or permit any of its Restricted Subsidiaries to create or suffer to exist, any Debt other than the following, provided, that, any Debt permitted by any clause below shall be permitted under this Section 5.02(d), notwithstanding that such Debt would not be permitted by any other clause:

(i) Debt of the Borrower to any Restricted Subsidiary and of any Restricted Subsidiary to the Borrower or any other Restricted Subsidiary; provided, that, (A) Debt of any Loan Party owing to any Subsidiary that is not a Loan Party shall be subordinated in right of payment to the Obligations on subordination terms reasonably satisfactory to the Agent and (B) Debt of any Subsidiary that is not a Loan Party owing to any Loan Party shall be subject to Section 5.02(i)(ix),

(ii) Debt existing on the Closing Date and described on Schedule 5.02(d) hereto (the "Existing Debt"), and any Permitted Refinancing thereof,

(iii) Debt of the Company or any Restricted Subsidiary incurred to finance the acquisition by the Company or any Restricted Subsidiary after the Closing Date of real property and improvements thereto (but not inventory or other personal property located therein) and Permitted Refinancings thereof and any Permitted Refinancings of such refinanced Debt; provided, that, (A) before and after giving effect to the incurrence of such Debt, no Default (to the knowledge of any Loan Party) or Event of Default shall have occurred and be continuing, (B) the secured recourse to the Company or any Restricted Subsidiary of such Debt shall be limited to the value of the real property and improvements financed by such Debt, and (C) the aggregate principal amount of Debt incurred on or after the Closing Date and permitted by clauses (iii), (iv) and (xv) of this Section 5.02(d) at any time outstanding shall not exceed the greater of (1) \$45,000,000 or (2) one and ninety-five hundredths percent (1.95%) of Total Assets,

(iv) Debt of the Borrower or any Restricted Subsidiary relating to purchase money security interests (as defined in the New York Uniform Commercial Code, as amended) and Permitted Refinancings thereof and any Permitted Refinancings of such refinanced Debt; provided, that, (A) before and after giving effect to the incurrence of such Debt no Default or Event of Default shall have occurred and be continuing, (B) such Debt (other than any Permitted Refinancings thereof or Permitted Refinancings of any such refinanced Debt) is incurred prior to or within two hundred seventy (270) days after such acquisition or the completion of such construction or improvement and (C) the aggregate principal amount of Debt incurred on or after the Closing Date and permitted by clauses (iii), (iv) and (xv) of this 5.02(d) at any time outstanding shall not exceed the greater of (1) \$45,000,000 or (2) one and ninety-five hundredths percent (1.95%) of Total Assets,

(v) without duplication of any other Debt permitted hereunder, liabilities for leases of real property characterized as Debt for purposes of GAAP,

(vi) Debt of the Company or any of its Restricted Subsidiaries consisting of take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business,

(vii) Debt arising pursuant to agreements in connection with any Dispositions of any business, assets or equity interests of any Restricted Subsidiary permitted under Section 5.02(e), any Permitted Acquisition or any other permitted Investment hereof consisting of indemnification, earn-out obligations, adjustment of purchase price or similar obligations, or guarantees or letters of credit, bankers' acceptances, accommodation guarantees, surety bonds or performance bonds securing any obligations of the Company or any of its Restricted Subsidiaries pursuant to such agreements, in any case incurred in connection with such permitted Disposition, Permitted Acquisition or other permitted Investment (other than guarantees of Debt incurred by any Person acquiring all or any portion of such business, assets or capital stock of such Restricted Subsidiary for the purpose of financing such acquisition) and any Permitted Refinancing thereof and any Permitted Refinancings of any such refinanced Debt,

(viii) Debt consisting of the financing of insurance premiums in the ordinary course of business,

(ix) Debt in respect of Hedging Agreements designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes,

(x) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business (provided, however, that such Debt is extinguished within ten (10) Business Days of the Company or the applicable Restricted Subsidiary becoming aware of such Debt) or other cash management obligations and other Debt in respect of netting services, automatic clearinghouse arrangements, credit card processing, overdraft protections and similar arrangements in the ordinary course of business,

(xi) other Debt so long as, immediately after giving effect to the issuance, incurrence or assumption of such Debt, (a) the Total Leverage Ratio on a pro forma basis is no greater than 4.50 to 1.00 and (b) the Secured Leverage Ratio on a pro forma basis is no greater than 2.50 to 1.00, and any Permitted Refinancing thereof; provided, that, for the purposes of calculating the Secured Leverage Ratio for this Section 5.02(d)(xi), any Debt incurred pursuant to this Section 5.02(d)(xi) shall be deemed Secured Debt,

(xii) Investments permitted under Section 5.02(i)(iv) and (vii) that constitute Debt,

(xiii) Debt of a Person existing at the time such Person is merged into or consolidated with the Company or any Subsidiary of the Company or becomes a Subsidiary of the Company and any Permitted Refinancing thereof; provided, that, such Debt was not created in contemplation of such merger, consolidation or acquisition,

(xiv) Obligations arising under the Loan Documents,

(xv) Debt of the Company or any Restricted Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Debt assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof and any Permitted Refinancings of such refinanced Debt; provided, that, (A) before and after giving effect to the incurrence of such Debt, no Default (to the knowledge of any Loan Party) or Event of Default shall have occurred and be continuing, (B) such Debt (other than any Permitted Refinancings thereof or Permitted Refinancings of any such refinanced Debt) is incurred prior to or within two hundred seventy (270) days after such acquisition or the completion of such construction or improvement and (C) the aggregate principal amount of Debt incurred on or after the Closing Date and permitted by clauses (iii), (iv) and (xv) of this Section 5.02(d) at any time outstanding shall not exceed the greater of (1) \$45,000,000 or (2) one and ninety-five hundredths percent (1.95%) of Total Assets,

(xvi) Debt incurred by Kodak International Finance Limited, a company organized and existing under the laws of England, in connection with short term working capital needs in an aggregate amount not to exceed \$25,000,000 at any time outstanding,

(xvii) Debt incurred by Restricted Subsidiaries organized under the laws of any jurisdiction outside of the United States in an aggregate amount not to exceed \$150,000,000 at any time outstanding,

(xviii) [Reserved],

(xix) Debt arising from the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business,

(xx) Debt consisting of Bank Product Obligations existing from time to time,

(xxi) Debt that is subordinated to the obligations of the Company under the Loan Documents on terms that are reasonably satisfactory to the Agent and the Required Lenders and any Permitted Refinancing thereof, provided, that, (i) the aggregate principal amount of such Debt shall not exceed \$50,000,000 at any time outstanding, (ii) after giving effect thereto, the Company shall be in pro forma compliance with a Fixed Charge Coverage Ratio of 1.10 to 1.00, and (iii) Excess Availability shall equal or exceed seventeen and one-half percent (17.5%) of the Revolving Credit Facility on a pro forma basis after giving effect to the issuance of such Debt,

(xxii) Debt incurred by the Company or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, supporting obligations, bankers' acceptances, performance bonds, surety bonds, statutory bonds, export or import indemnities, customs and appeal bonds, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Debt with respect to reimbursement-type obligations regarding workers compensation claims; provided, that, no such Debt is Debt for Borrowed Money,

(xxiii) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Company or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business,

(xxiv) unsecured Convertible Note Debt in an aggregate principal amount not to exceed \$25,000,000 (plus any interest paid in kind) and any Permitted Refinancing thereof,

(xxv) unsecured Debt consisting of guarantees of amounts owing by customers of the Company under equipment and vendor financing programs in an aggregate amount, when combined with Investments pursuant to Section 5.02(e)(xv), not to exceed at any time outstanding the greater of (A) \$40,000,000 and (B) one and ninety-five hundredths percent (1.95%) of Total Assets,

(xxvi) Guarantees by the Company of Debt of any Restricted Subsidiary and by any Restricted Subsidiary of Debt of the Company or any other Restricted Subsidiary; provided, that, guarantees by any Loan Party of Debt of any Subsidiary that is not a Loan Party shall be subject to Section 5.02(i),

(xxvii) Term Loan Debt in an aggregate principal amount not to exceed \$275,000,000 at any time outstanding, plus any interest paid in kind, and any Permitted Refinancing thereof,

(xxviii) Supplemental Letter of Credit Facility Debt in an aggregate principal and not to exceed \$50,000,000 and any Permitted Refinancing thereof,

(xxix) to the extent constituting Debt, (A) unsecured Debt of Borrower arising under the Series B Preferred Stock in an aggregate face amount of up to \$100,000,000 plus any dividends or interest paid in kind and any Permitted Refinancing thereof and (B) unsecured Debt of Borrower arising under the Series C Stock in an aggregate face amount of up to \$100,000,000 plus any dividends or interest paid in kind and any Permitted Refinancing thereof,

(xxx) unsecured Debt (including preferred stock to the extent constituting Debt) of Borrower incurred after the Amendment No. 4 Effective Date in an aggregate principal or face amount of up to \$100,000,000 plus any interest paid in kind, provided, that, such Debt (A) does not have any scheduled amortization payments, mandatory redemptions or sinking fund obligations or mandatory prepayments (including cash flow sweeps) on or prior to the date that is ninety-one (91) days after the Extended Maturity Date (other than, in the case of Debt, customary offers to purchase upon a change of control, asset sale or event of loss, customary acceleration rights after an event of default and payments required to prevent any such Debt from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i) of the Code, or any successor provision thereto or, in the case of preferred stock, redemption rights in connection with a fundamental change and similar provisions), (B) does not mature prior to the date that is ninety-one (91) days after the Extended Maturity Date, (C) does not have financial maintenance covenants (unless such covenants apply only after the maturity of the Loans or are added for the benefit of the Lenders pursuant to a conforming amendment (which amendment shall not require the consent of the Lenders)), (D) does not have a definition of "Change in Control" (or any other defined term having a similar purpose) that is more restrictive than the definition of Change in Control set forth herein (unless such definition applies only after the maturity of the Loans or this Agreement is amended to conform the provisions of this Agreement with such more restrictive definition (which amendment shall not require the consent of the Lenders)) and (E) does not otherwise have covenants or events of default that are, taken as a whole, materially more favorable to the holders of such Debt than those set forth in this Agreement, as reasonably determined by the Borrower (unless such covenants or events of default apply only after the maturity of the Loans or this Agreement is amended to conform the provisions of this Agreement with such more restrictive covenants or events of default (which amendment shall not require the consent of the Lenders)),

(xxxix) Debt representing deferred compensation or similar obligations to employees or directors of the Company or any of its Restricted Subsidiaries incurred in the ordinary course of business,

(xxxvii) Debt consisting of promissory notes issued by the Company or any Restricted Subsidiary to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of equity interests of the Company or any direct or indirect parent of the Company permitted hereunder; provided, that, the aggregate principal amount of such Debt shall not exceed \$10,000,000 at any time outstanding,

(xxxviii) Debt of Foreign Subsidiaries in connection with Permitted Receivables Financing in an aggregate amount not to exceed \$25,000,000 outstanding at any one time,

(xxxiv) additional Debt of Loan Parties and any Restricted Subsidiaries not to exceed \$60,000,000 at any time outstanding and

(xxxv) issuance of Disqualified Stock.

(e) Sales and Other Transactions. Dispose of, or permit any of its Restricted Subsidiaries to Dispose of any assets (including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division"), other than the following, provided, that, such action permitted by any clause below shall be permitted under this Section 5.02(e), notwithstanding that such action would not be permitted by any other clause:

(i) Dispositions of Inventory in the ordinary course of its business and the granting of any option or other right to purchase, lease or otherwise acquire the Inventory in the ordinary course of business,

(ii) Dispositions of cash and Cash Equivalents in the ordinary course of business,

(iii) Dispositions in a transaction authorized by Section 5.02(b),

(iv) Dispositions of obsolete or worn out property or property no longer used or useful other than Eligible Equipment,

(v) Dispositions set forth on Schedule 5.02(e),

(vi) Dispositions of assets among the Company and its Subsidiaries, provided, that, any such sales, transfers or Dispositions of assets shall be made in compliance with Section 5.01(k), and

(vii) other Dispositions of assets, provided, that, (A) if such assets (other than machinery or equipment) constitute Collateral that is included in the Borrowing Base, the Company shall provide a Borrowing Base Certificate to the Agent reflecting the revised Borrowing Base giving effect to such sale, conveyance, transfer, lease or other Disposition or (B) if any such property or assets are comprised of machinery and equipment which is Eligible Equipment, then the Company shall deliver to the Agent a pro forma Borrowing Base Certificate giving effect to any such Dispositions prior to such occurrence, and evidencing that no Overadvance shall exist after giving effect to any such Disposition, and a certificate to the Agent indicating which assets constituting Eligible Equipment and other Collateral are being Disposed.

(f) Payment Restrictions Affecting Subsidiaries. Directly or indirectly enter or permit a Restricted Subsidiary to enter into any agreement or arrangement limiting the ability of any of its Restricted Subsidiaries to declare or pay dividends or other distributions in respect of its equity interests or repay or prepay any Debt owed to, make loans or advances to, or otherwise transfer assets to or make Investments in, the Company or any Restricted Subsidiary of the Company (whether through a covenant restricting dividends, loans, asset transfers or investments, a financial covenant or otherwise), except (i) as provided in this Agreement, (ii) any agreement or instrument evidencing Debt existing on the Closing Date (as amended, modified, supplemented or replaced, or subject to a Permitted Refinancing, in each case to the extent such restrictions are not expanded in scope in any material respect), (iii) any agreement in effect at the time a Person first became a Restricted Subsidiary of the Company, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Company; (iv) specific property encumbered to secure payment of particular Debt to be sold pursuant to an executed agreement with respect to a Disposition or intellectual property license permitted hereunder; (v) restrictions set forth in the documents governing the Term Loan Debt, the Supplemental Letter of Credit Facility Debt, the Convertible Note Debt and in the documents governing other existing Debt as set forth on Schedule 5.02(d); (vi) by reason of customary provisions restricting assignments, licenses, subletting or other transfers contained in leases, licenses, joint venture agreements, purchase and sale or merger agreements and other similar agreements entered into in the ordinary course of business so long as such restrictions do not extend to assets other than those that are the subject of such lease, license or other agreement, as the case may be; or (vii) customary restrictions in connection with financings by Foreign Subsidiaries.

(g) Change in Nature of Business. Make, or permit any of its Restricted Subsidiaries to make, any material change in the nature of the business as carried on or as contemplated to be carried on by the Company and its Restricted Subsidiaries taken as a whole at the Closing Date or as reflected in the Chapter 11 Plan.

(h) Dividends and Other Payments. Declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of capital stock of the Company, or purchase, redeem or otherwise acquire for value (or permit any of its Restricted Subsidiaries to do so) any shares of any class of capital stock of the Company or any warrants, rights or options to acquire any such shares, now or hereafter outstanding (a "Restricted Payment"), except that the Company may

(i) declare and make any dividend payment or other distribution payable in common stock of the Company, or in the case of dividends with respect to preferred stock, shares of such preferred stock,

(ii) purchase, redeem or otherwise acquire shares of its common stock or warrants, rights or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock,

(iii) repurchases of equity interests (A) constituting fractional shares or (B) deemed to occur upon exercise of stock options or warrants or other securities convertible or exchangeable into equity interests if such equity interests represent all or a portion of the exercise price of such options or warrants,

(iv) declare or pay cash dividends to its stockholders and purchase, redeem or otherwise acquire shares of its capital stock (including Disqualified Stock) or warrants, rights or options to acquire any such shares for cash so long as: (A) as of the date of any such transaction or payment, and after giving effect thereto, no Default shall have occurred and be continuing or would result therefrom, (B) as of the date of any such transaction or payment, the Excess Availability as of such date and at any time during the immediately preceding thirty (30) consecutive day period shall have been not less than twenty-five percent (25%) of the Revolving Credit Facility, and after giving effect to the transaction or payment, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, the Excess Availability as of such date and at any time during the immediately preceding thirty (30) consecutive day period shall be not less than twenty-five percent (25%) of the Revolving Credit Facility, (C) as of the date of any such transaction or payment, and after giving effect thereto, on a pro forma basis, the Fixed Charge Coverage Ratio for the immediately preceding twelve (12) consecutive month period ending on the last day of the fiscal month prior to the date of such payment for which Agent has received financial statements shall be at least 1.00 to 1.00, and (D) Agent shall have received a certificate of an authorized officer of Company certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby,

(v) (A) declare or pay cash dividends to (1) the holders of the Series B Preferred Stock issued in the Series B Preferred Stock Issuance in amounts and at the times provided for in the Series B Preferred Stock as in effect on the Amendment No. 4 Effective Date subject to amendment to the extent permitted under Section 5.02(j)(ii) or (2) the holders of any preferred stock issued for the Permitted Refinancing thereof, (B) declare or pay cash dividends to (1) the holders of the Series C Preferred Stock issued in the Series C Preferred Stock Issuance in amounts and at the times provided for in the Series C Preferred Stock as in effect on the Amendment No. 4 Effective Date subject to amendment to the extent permitted under Section 5.02(j)(ii) or (2) the holders of any preferred stock issued for the Permitted Refinancing thereof and (C) declare or pay cash dividends to (1) the holders of any series of preferred stock issued after the Amendment No. 4 Effective Date permitted to be issued under Section 5.02(d)(xxx)(to the extent deemed to constitute Debt) in amounts and at the times provided for in the terms thereof as in effect on the date of the issuance thereof subject to amendment to the extent permitted under Section 5.02(j)(ii) and (2) to the holders of any preferred stock issued for the Permitted Refinancing thereof,

(vi) other Restricted Payments in an amount not to exceed in the aggregate \$5,000,000; provided, that, as of the date of any such payment, and after giving effect thereto, no Default shall have occurred and be continuing or would result therefrom.

For the avoidance of doubt, the Company shall be permitted to issues shares of its common stock in connection with any conversion of its convertible Debt, upon the exercise of options or warrants or otherwise.

(i) Investments in Other Persons. Make, or permit any of its Restricted Subsidiaries to make, any Investment in any Person, except the following (provided, that, any Investment permitted by any clause below shall be permitted under this Section 5.02(i), notwithstanding that such Investment would not be permitted by any other clause):

(i) (A) Investments by the Company and its Restricted Subsidiaries in their Subsidiaries outstanding on the Closing Date, (B) additional Investments by the Company and its Restricted Subsidiaries in the Company or the Loan Parties, (C) Investments by any Loan Party in another Loan Party and (E) additional Investments by Restricted Subsidiaries of the Company that are not Loan Parties in other Restricted Subsidiaries that are not Loan Parties;

(ii) loans and advances to employees in the ordinary course of the business of the Company and its Subsidiaries in an aggregate principal amount not to exceed \$10,000,000;

(iii) [Reserved],

(iv) Investments in Hedging Agreements designed to hedge against fluctuations in interest rates, foreign exchange rates or in commodity prices incurred in the ordinary course of business;

(v) Investments received in settlement of claims against another Person in connection with (A) a bankruptcy proceeding against such Person, (B) accounts receivable arising from or trade credit granted to, in the ordinary course of business, a financially troubled Account Debtor and (C) disputes regarding intellectual property rights;

(vi) [Reserved],

(vii) Permitted Acquisitions,

(viii) Investments by the Company and its Subsidiaries in cash and Cash Equivalents.

(ix) Investments by the Company or any Restricted Subsidiary (other than with Intellectual Property that is material to the business of the Company and its Restricted Subsidiaries taken as a whole) in (i) joint ventures not constituting any Unrestricted Subsidiary and (ii) Unrestricted Subsidiaries to fund operating or capital expenses in the ordinary course of business; provided, that, (A) any Investment constituting such equity interests held by a Loan Party shall be pledged pursuant to, and to the extent required by, the Security Agreement, (B) immediately before and after giving effect to such Investment, no Default or Event of Default shall have occurred and be continuing and (C) the aggregate amount of Investments by Loan Parties in Restricted Subsidiaries that are not Loan Parties pursuant to clause (i) of this Section 5.02(i) and in joint ventures or Unrestricted Subsidiaries pursuant to this clause (ix) shall not exceed in the aggregate \$75,000,000 at any time outstanding, when taken together with the guarantees by Loan Parties of Subsidiaries that are not Loan Parties permitted pursuant to clause (x) below; provided, that, (1) the aggregate amounts set forth in clause (C) shall be calculated net of any returns, profits, distributions and similar amounts received by any Loan Party from any Investments made by such Loan Party in Restricted Subsidiaries that are not Loan Parties pursuant to clause (i) of this Section 5.02(i) and in joint ventures or Unrestricted Subsidiaries pursuant to this clause (ix) (which, in each case, shall not exceed the amount of such Investment (valued at cost) at the time such Investment was made)); (2) to the extent funds are returned (in full or in part) to any Loan Party which is making such Investment either from the party in which the Investment was made or any other entity in connection with or related to the transaction in which the Investment was made (even if not classified as return on investment), only the initial Investment net of the amount so returned shall be included for purposes of determining the amount of any limit on Investments by the Company or any Restricted Subsidiary in the Company or any other Restricted Subsidiary and on Investments in joint ventures and Unrestricted Subsidiaries permitted under this Section 5.02(i)(ix) and the remainder of such Investment shall be permitted, and (3) in no event shall the aggregate amount of the Investments permitted under this clause (ix), together with investments under clause (xvi) below, in each case to the extent made with ABL Priority Collateral (other than cash and Cash Equivalents) exceed \$10,000,000 at any time outstanding and after giving effect to any such Investment, there shall be no Borrowing Base Deficiency,

(x) Guarantees constituting Debt permitted by Section 5.02(d); provided, that, the aggregate principal amount of Debt of Restricted Subsidiaries that are not Loan Parties that is guaranteed by any Loan Party shall be subject to the limitation set forth in clause (ix) above,

(xi) non-cash consideration received in connection with the Disposition of any asset in compliance with Section 5.02(e),

(xii) earn-outs and other customary post-Disposition obligations arising out of permitted Dispositions,

(xiii) Investments in deposit accounts and securities account (A) opened in the ordinary course of business, (B) holding only cash and Cash Equivalents and (C) subject to Control Agreements to the extent required by the Loan Documents,

(xiv) (i) loans and advances made to distributors in the ordinary course and (ii) deposits, prepayments and other credits to suppliers or service providers made in the ordinary course of business,

(xv) Investments resulting from the funding of amounts owing by customers of the Company or any Restricted Subsidiary under equipment and vendor financing programs in an aggregate amount, when combined with Debt incurred pursuant to Section 5.02(d) (xxv), not to exceed at any time outstanding the greater of (A) \$40,000,000 and (2) one and ninety-five hundredths percent (1.95%) of Total Assets,

(xvi) other Investments made after the Closing Date (other than with Intellectual Property that is material to the business of the Company and its Restricted Subsidiaries taken as a whole) in an aggregate amount not to exceed (i) \$30,000,000, during each consecutive twelve (12) month period, plus up to the amount available in the following fiscal year, plus any unused amounts from prior fiscal years, minus any portion of the amount available in such fiscal year used in the preceding fiscal year and (ii) \$90,000,000 in the aggregate; provided, that, (1) immediately before and after giving effect to the making of any such Investment, no Default or Event of Default shall have occurred and be continuing, (2) once the aggregate amount of Investments made pursuant to this subclause (xvi) exceeds \$35,000,000, the Company shall provide evidence to Agent that the sum of US Cash and all other cash and Cash Equivalents of the Company and its Restricted Subsidiaries (other than cash held as cash collateral by the Supplemental Letter of Credit Facility Agent in connection with the Supplemental Letter of Credit Facility) is equal to or greater than \$450,000,000 both immediately prior to and after giving effect to such Investment, and (3) in no event shall the aggregate amount of the Investments permitted under this clause (xvi), together with investments under clause (ix) above, in each case to the extent made with ABL Priority Collateral (other than cash and Cash Equivalents) exceed \$10,000,000 at any time outstanding and after giving effect to any such Investment, there shall be no Borrowing Base Deficiency,

(xvii) other Investments made after the Closing Date (other than with Intellectual Property that is material to the business of the Company and its Restricted Subsidiaries taken as a whole) so long as the following conditions are satisfied with respect to each such Investment: (A) as of the date of any such Investment, and after giving effect thereto, no Default shall exist or have occurred and be continuing, (B) as of the date of any such payment and after giving effect thereto, the Excess Availability as of such date and at any time during the immediately preceding thirty (30) consecutive day period and after giving effect to the Investment, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, shall, in each case, have been not less than twenty-two and one-half percent (22.5%) of the Revolving Credit Facility, and (C) as of the date of any such Investment, and after giving effect thereto, on a pro forma basis, the Fixed Charge Coverage Ratio for the immediately preceding twelve (12) consecutive month period ending on the last day of the fiscal month prior to the date of such payment for which Agent has received financial statements shall be at least 1.00 to 1.00 (notwithstanding the foregoing, if, as of the date of such Investments, as applicable, the Excess Availability at any time during the immediately preceding thirty (30) consecutive day period and on the date of such Investment shall have been not less than thirty percent (30%) of the Revolving Credit Facility, and after giving effect to such Investment on a pro forma basis using the most recent calculation of the Borrowing Base, as of the date of such Investment and at any time during the thirty (30) consecutive day period immediately preceding such Investment, the Excess Availability shall have been not less than thirty percent (30%) of the Revolving Credit Facility, satisfaction of the Fixed Charge Coverage Ratio test described in this subclause (xvii) shall not be required with respect to such Investment), and

(xviii) accounts payable and other similar extension of credit to customers or suppliers in the ordinary course of business.

(j) Prepayments, Payments, Amendments, Etc. of Debt.

(i) Prepay, redeem, purchase, defease, convert into cash or otherwise satisfy prior to the scheduled maturity thereof in any manner, any public or secured or unsecured debt securities, any Term Loan Debt, any Supplemental Letter of Credit Facility Debt, or Convertible Note Debt or prepay, redeem, purchase, defease, or convert into cash, or otherwise satisfy prior to the scheduled maturity thereof in any manner or make any payment in violation of any subordination terms of, any Debt for Borrowed Money except:

(A) regularly scheduled (including repayments of revolving facilities) or required repayments, prepayments or redemptions of Debt (including, in the case of Disqualified Stock, dividends payable in respect thereof or other payments owing in respect thereof as a result of any conversion to common stock permitted by the terms of such Disqualified Stock) permitted to be incurred hereunder (including payments of principal and interest as and when due), and

(B) any prepayments or redemptions of Debt in connection with a Permitted Refinancing of such Debt permitted by Section 5.02(d); provided, that, (1) before and after giving effect to such prepayment, redemption, purchase, defeasance or other satisfaction, no Default under Section 6.01(a) or (e) or Event of Default shall have occurred and be continuing and (2) the Agent shall have received a certificate from a Responsible Officer of the Company certifying compliance with the foregoing clause (1), or

(C) any voluntary prepayments of the Term Loan Debt, Convertible Note Debt, Series B Preferred Stock, Series C Preferred Stock or unsecured Debt permitted pursuant to Section 5.02(d)(xxx), in each case so long as the following conditions are satisfied with respect to each such payment: (1) as of the date of any such payment, and after giving effect thereto, no Default shall exist or have occurred and be continuing, (2) as of the date of any such payment and after giving effect thereto, the Excess Availability as of such date and at any time during the immediately preceding thirty (30) consecutive day period and after giving effect to the payment, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, shall, in each case, have been not less than twenty-two and one-half percent (22.5%) of the Revolving Credit Facility, and (3) as of the date of any such payment, and after giving effect thereto, on a pro forma basis, the Fixed Charge Coverage Ratio for the immediately preceding twelve (12) consecutive month period ending on the last day of the fiscal month prior to the date of such payment for which Agent has received financial statements shall be at least 1.00 to 1.00 (notwithstanding the foregoing, if, as of the date of such voluntary prepayments of the Term Loan Debt or Convertible Note Debt, as applicable, the Excess Availability at any time during the immediately preceding thirty (30) consecutive day period and on the date of such voluntary payment shall have been not less than thirty percent (30%) of the Revolving Credit Facility, and after giving effect to such voluntary prepayment on a pro forma basis using the most recent calculation of the Borrowing Base, as of the date of such voluntary payment and at any time during the thirty (30) consecutive day period immediately preceding such voluntary prepayment, the Excess Availability shall have been not less than thirty percent (30%) of the Revolving Credit Facility, satisfaction of the Fixed Charge Coverage Ratio test described in this subclause (C) shall not be required with respect to such voluntary prepayment), or (D) conversion of convertible debt into common stock of the Company and payments of cash in lieu of fractional shares upon any such conversion or

(ii) (A) directly or indirectly, amend, modify, or change any of the terms or provisions of the Term Loan Documents except as permitted by the Term Loan Intercreditor Agreement, (B) directly or indirectly, amend, modify or change in any manner adverse to the rights or interests of Agent or the Lenders any term or condition of any subordinated Debt, or (C) directly or indirectly, amend, modify or change the Convertible Note Documents, the Series B Preferred Stock, the Series C Preferred Stock, or after the issuance thereof any Debt permitted to be issued under Section 5.02(d)(xxx) in a manner that would (1) increase the cash interest rate margin (or percentage used for cash dividend payments in the case of the Series B Preferred Stock, the Series C Preferred Stock or any other preferred stock) by more than 300 basis points in excess of the cash interest rate margin (or percentage used for cash dividend payments, as the case may be) applicable to such Debt as of the Amendment No. 4 Effective Date in the case of the Convertible Note Documents and Series B Preferred Stock, and as of the date of issuance in the case of Series C Preferred Stock or Debt issued under Section 5.02(d)(xxx), (2) require Borrower to make any cash payments of principal or liquidation value thereunder, or the redemption or repurchase thereof, earlier or more frequently than the dates required as in effect on the Amendment No. 4 Effective Date in the case of the Convertible Note Documents and Series B Preferred Stock, or as of the date of issuance in the case of Series C Preferred Stock or Debt issued under Section 5.02(d)(xxx), or (3) require payments that are permitted to be made in the form of payment in kind or capitalized interest to be made in cash or other property; except that such Convertible Note Documents, Series B Preferred Stock, Series C Preferred Stock or other preferred stock may be amended as to any of such terms with regard to the payment of amounts equal to any increase in the cash interest rate margin (or percentage used for cash dividend payments, as the case may be) after the Amendment No. 4 Effective Date as permitted above, including increasing the frequency of payments for such amounts or changing the amounts of cash payments relative to payments in kind in each case up to the amount of any such increases in cash interest rate margin (or percentage used for cash dividend payments, as applicable).

SECTION 5.03. Financial Covenants.

(a) Fixed Charge Coverage Ratio. So long as any Fixed Charge Coverage Ratio Trigger Event shall have occurred and be continuing, the Company and its Restricted Subsidiaries on a Consolidated basis will maintain a Fixed Charge Coverage Ratio, for the four fiscal quarters most recently ended as of the fiscal quarter for which financial statements have been delivered pursuant to Section 5.01, of not less than 1.00 to 1.00.

(b) [Reserved].

(c) Minimum Liquidity.

(i) Borrower shall have on the last day of each Fiscal Quarter Minimum Liquidity of not less than \$80,000,000, tested on the receipt by Agent of the financial statements required pursuant to Section 5.01(h)(i) and (ii), as applicable, with respect to such Fiscal Quarter.

(ii) Borrower shall have Minimum Liquidity of not less than \$50,000,000 as of the close of business on each Business Day, provided, that, in the event that at any such time Minimum Liquidity shall be less than \$50,000,000, it shall not be an Event of Default so long as: (i) the amount of the Minimum Liquidity is not less than \$40,000,000, (ii) Borrower shall deposit or receive cash and Cash Equivalents in an amount not less than the amount required so that Minimum Liquidity shall be equal to or greater than \$50,000,000 no later than the close of business on the next Business Day after the date that Minimum Liquidity shall be less than \$50,000,000, and (iii) Minimum Liquidity shall not be less than \$50,000,000 as of the close of business on more than two (2) Business Days in any calendar month. The provisions of this clause (c)(ii) shall not be construed to affect, limit or modify the amount of Minimum Liquidity required as of the last day of any Fiscal Quarter pursuant to (c)(i) above.

ARTICLE VI
EVENTS OF DEFAULT

SECTION 6.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) (i) Borrower shall fail to pay any principal of any Revolving Loan when the same becomes due and payable; (ii) Borrower shall fail to pay any interest on any Revolving Loan or fees within three (3) Business Days after the same becomes due and payable; or (iii) any Loan Party shall fail to make any other payment under any Loan Document, within three (3) Business Days after notice of such failure is given by the Agent or any Lender to the Company; or

(b) Any representation or warranty made by Borrower herein or by any Loan Party in any Loan Document to which it is a party or by Borrower (or any of its officers) in a certificate delivered under or in connection with any Loan Document shall prove to have been incorrect in any material respect when made; or

(c) (i) The Company or Restricted Subsidiary shall fail to perform or observe any term, covenant or agreement contained in Sections 5.01(d), 5.01(e), clauses (i) through (vii) and (ix) of 5.01(h), 5.02 or 5.03 hereof, or (ii) any Loan Party or any Subsidiary of any Loan Party shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed if such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Company by the Agent; or

(d) The Company or any of its Restricted Subsidiaries shall fail to pay any principal of or premium or interest on the Term Loan Debt, the Supplemental Letter of Credit Facility Debt or any other Debt (excluding Debt outstanding hereunder of the Company or such Restricted Subsidiary (as the case may be)) that is outstanding in a principal, or in the case of Swap Obligations, net amount of, at least (i) \$25,000,000 in the aggregate in the case of Debt of the Borrower or any of its Restricted Subsidiaries that are domestic Subsidiaries and (ii) \$50,000,000 in the aggregate in the case of Restricted Subsidiaries that are Foreign Subsidiaries, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to cause, or to permit the holders or beneficiaries of such Debt (or a trustee or agent on behalf of such holders or beneficiaries) to cause, with the giving of notice if required, such Debt 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 Debt to be made, in each case prior to the stated maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(e) Borrower or any of its Restricted Subsidiaries (other than Immaterial Subsidiaries) shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against Borrower, any Loan Party or any Material Subsidiary seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, interim receiver, monitor, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of sixty (60) days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or Borrower, any Loan Party or any Material Subsidiary shall take any corporate action to authorize any of the actions set forth above in this subsection (e); provided, that, in the case of any Foreign Subsidiary, such event, individually, or when aggregated with all such events occurring after the Closing Date, would reasonably be expected to have a Material Adverse Effect; or

(f) Other than with respect to the matters set forth on Schedule 6.01(f) (but solely to the extent that neither the Borrower nor any of its Material Subsidiaries (excluding Subsidiaries which would be permitted, at all times while the applicable judgment remains outstanding, to be designated as Immaterial Subsidiaries, without regard for if such designation has been made) has any obligation with respect to judgments relating to items listed on Schedule 6.01(f), judgments or orders for the payment of money in excess of \$25,000,000 (or its US Dollar equivalent) in the aggregate shall be rendered against the Company or any of its Subsidiaries and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) A Change of Control shall occur; or

(h) Any ERISA Event shall have occurred with respect to a Plan and such ERISA Event could reasonably be expected to result in a Material Adverse Effect; or any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount that, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Loan Parties and the ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), exceeds \$25,000,000; or

(i) Any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount that, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Loan Parties and the ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), exceeds \$25,000,000; or

(j) Any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or is being terminated, within the meaning of Title IV of ERISA, or has been determined to be in "endangered" or "critical" status within the meaning of Section 432 of the Code or Section 305 of ERISA, and as a result of such insolvency or termination or determination, the aggregate annual contributions of the Loan Parties and the ERISA Affiliates to all Multiemployer Plans that are then insolvent, being terminated or in endangered or critical status have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such insolvency or termination or determination, occurs by an amount exceeding \$25,000,000; or

(k) Any provision of any Collateral Document material to the substantial realization of the rights of the Lenders under the Collateral Documents taken as a whole, or any provision of any other Loan Document after delivery thereof on the Initial Closing Date or the Closing Date or pursuant to Section 5.01(i) or (j) shall for any reason cease to be valid and binding on or enforceable against any Loan Party party to it, or any such Loan Party shall so state in writing; or

(l) Any Collateral Document or financing statement after delivery thereof on the Initial Closing Date or the Closing Date or pursuant to Section 5.01(i) or (j) shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority lien on and security interest in any of the ABL Priority Collateral having a Value of \$5,000,000 or more or any Collateral other than ABL Priority Collateral having a Value of \$10,000,000 or more (other than the Specified Collateral as set forth in Section 6(m) of the Security Agreement), in each case purported to be covered thereby, and with respect to any Collateral other than ABL Priority Collateral, such failure shall remain unremedied for thirty (30) days after the earlier of (A) an officer of the Borrower becoming aware of such failure and (B) written notice thereof being given to the Company by the Agent.

then, and in any such event, the Agent (i) shall at the request, or may with the consent, of the Required Lenders, by notice to the Company, declare the obligation of each Lender to make Revolving Loans (other than Revolving Loans to be made by an Issuing Bank or a Lender pursuant to Section 2.03(c)) and of the Issuing Banks to issue Letters of Credit to be terminated, whereupon the same shall forthwith terminate, and (ii) shall at the request, or may with the consent, of the Required Lenders, by notice to the Company, declare the Revolving Loans, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Revolving Loans, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower and each other Loan Party; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to Borrower under the Federal Bankruptcy Code, (A) the obligation of each Lender to make Revolving Loans (other than Revolving Loans to be made by an Issuing Bank or a Lender pursuant to Section 2.03(c)) and of the Issuing Banks to issue Letters of Credit shall automatically be terminated and (B) the Revolving Loans, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by Borrower and each other Loan Party.

SECTION 6.02. Actions in Respect of the Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Agent may, or shall at the request, of the Required Lenders, irrespective of whether it is taking any of the actions described in Section 6.01, make demand upon the Borrower to, and forthwith upon such demand the Borrower will, (a) pay to the Agent on behalf of the Lenders in same day funds at the Agent's office designated in such demand, for deposit in the L/C Cash Deposit Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding or (b) make such other arrangements in respect of the outstanding Letters of Credit as shall be acceptable to the Agent and not more disadvantageous to the Borrower than clause (a); provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Company under the Federal Bankruptcy Code, an amount equal to the aggregate Available Amount of all outstanding Letters of Credit shall be immediately due and payable to the Agent for the account of the Lenders without notice to or demand upon the Borrower, which are expressly waived by the Borrower, to be held in the L/C Cash Deposit Account. If at any time an Event of Default is continuing the Agent determines that any funds held in the L/C Cash Deposit Account are subject to any right or claim of any Person other than the Agent and the Lenders or that the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, then the Borrower will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited and held in the L/C Cash Deposit Account, an amount equal to the excess of (i) such aggregate Available Amount over (ii) the total amount of funds, if any, then held in the L/C Cash Deposit Account that the Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the L/C Cash Deposit Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable law. After all such Letters of Credit shall have expired or been fully drawn upon, if at such time (x) no Event of Default is continuing or (y) all other obligations of the Company hereunder and under the Notes shall have been paid in full, the balance, if any, in such L/C Cash Deposit Account shall be returned to the Borrower. For purposes of this Section 6.02, the term "Available Amount" shall mean one hundred five percent (105%) of the maximum available amount to be drawn under such Letter of Credit.

SECTION 6.03. [Reserved].

SECTION 6.04. Application of Funds.

(a) Payments made by Borrower and other Loan Parties hereunder shall be applied (a) first, as specifically required hereby; (b) second, to Obligations then due and owing; (b) third, to other Obligations specified by Borrower; and (c) fourth, as determined by Agent in its discretion.

(b) Notwithstanding anything to the contrary set forth in any Loan Document, during the occurrence and continuance of an Event of Default, any amounts received by the Agent on account of the Obligations, whether received from or on account of any Loan Party, or in respect of any Collateral, setoff or otherwise, shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article II) payable to the Agent in its capacity as such;

Second, to payment of all amounts owing to Agent in respect of Swingline Loans, Overadvance Loans, Protective Revolving Loans, and Revolving Loans and participations that a Defaulting Lender has failed to settle or fund;

Third, to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Issuing Banks (including fees, charges and disbursements of counsel to the respective Issuing Banks payable under the Loan Documents and amounts payable under Article II), ratably among them in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, Letter of Credit fees and commitment fees) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders payable under the Loan Documents and amounts payable under Article II (in each case, other than fees, indemnities and other amounts, and amounts then payable under Article II, arising in respect of Bank Product Obligations)), ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit fees, commitment fees and interest on the Revolving Loans, unreimbursed amounts under Letters of Credit and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to the Agent for the account of the Issuing Banks, to Cash Collateralize that portion of Letter of Credit Obligations comprising the aggregate undrawn amount of Letters of Credit, ratably among the Issuing Banks in proportion to the respective amounts described in this clause Sixth held by them;

Seventh, to the Agent for the payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans, unreimbursed amounts under Letters of Credit and Bank Product Obligations arising under Hedging Agreements but only up to the amount of the Bank Product Reserve, ratably among the Lenders, the Issuing Banks, and the Bank Product Providers in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to payment of the Bank Product Obligations other than as provided for in clause Seventh above, ratably among the Bank Product Providers in proportion to the respective amounts described in this clause Eighth held by them,

Ninth, to payment of all other Obligations ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause Ninth held by them; and

Last, the balance, if any, after all of the Obligations have been paid in full in cash, to the Borrower or as otherwise required by law.

Subject to Section 6.02, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to Section 6.04(a) or clause Sixth 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.

Amounts shall be applied to payment of each category of Obligations only after full payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. Monies and proceeds obtained from a Loan Party shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Loan Parties to preserve the allocations in any applicable category. The Agent shall have no obligation to calculate the amount of any Bank Product Obligation and may request a reasonably detailed calculation thereof from a Bank Product Provider. If the provider fails to deliver the calculation within five (5) days following request, the Agent may assume the amount is zero. Each holder of Obligations under a Bank Product Agreement not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Agent pursuant to the terms of Article VIII hereof for itself and its Affiliates as if a "Lender" party hereto. The allocations set forth in this Section are solely to determine the rights and priorities among Secured Parties, and may be changed by agreement of the affected Secured Parties, without the consent of any Loan Party. This Section is not for the benefit of or enforceable by any Loan Party, and each Loan Party irrevocably waives the right to direct the application of any payments or Collateral proceeds subject to this Section.

ARTICLE VII
GUARANTY

SECTION 7.01. Guaranty; Limitation of Liability.

(a) Borrower and each Subsidiary Guarantor, jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Loan Party and each other Subsidiary of the Company now or hereafter existing under or in respect of the Loan Documents or any Bank Product Agreement (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise, exclusive of Excluded Swap Obligations (such obligations being the "Guaranteed Obligations"), and agrees to pay any and all expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Agent or any other Lender in enforcing any rights under this Guaranty or any other Loan Document. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party or Subsidiary of the Company, as applicable, to the Agent or any Lender under or in respect of the Loan Documents or any Bank Product Agreement but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party or Subsidiary, as the case may be.

(b) Each Guarantor, and by its acceptance of this Guaranty, the Agent and each other Lender, hereby confirms that it is the intention of all such Persons that this Guaranty and the obligations of each Subsidiary Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty and the obligations of such Guarantor hereunder. To effectuate the foregoing intention, the Agent, the Lenders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance.

(c) Each Subsidiary Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to the Agent or any Lender under this Guaranty or any guaranty supplement of the Guaranteed Obligations, such Subsidiary Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Subsidiary Guarantor and each other guarantor so as to maximize the aggregate amount paid to the Agent and the Lenders under or in respect of the Loan Documents.

SECTION 7.02. Guaranty Absolute. Each Guarantor guarantees that the applicable Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Agent or any Lender with respect thereto. The obligations of each Guarantor under or in respect of this Guaranty are independent of the applicable Guaranteed Obligations or any other obligations of any other Loan Party under or in respect of the Loan Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guaranty, irrespective of whether any action is brought against Borrower or any other Loan Party or whether Borrower or any other Loan Party is joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the applicable Guaranteed Obligations or any other obligations of any other Loan Party under or in respect of the Loan Documents, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the applicable Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral or any other collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the applicable Guaranteed Obligations;

(d) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the applicable Guaranteed Obligations or any manner of sale or other Disposition of any Collateral or any other collateral for all or any of the applicable Guaranteed Obligations or any other obligations of any Loan Party under the Loan Documents or any other assets of any Loan Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any Loan Party or any of its Subsidiaries;

(f) any failure of the Agent or any Lender to disclose to any Loan Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party now or hereafter known to the Agent or such Lender (each Guarantor waiving any duty on the part of the Agent and the Lenders to disclose such information);

(g) the failure of any other Person to execute or deliver this Agreement, any Guaranty Supplement or any other guaranty or agreement or the release or reduction of liability of any Guarantor or other guarantor or surety with respect to the applicable Guaranteed Obligations; or

(h) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Agent or any Lender that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the applicable Guaranteed Obligations is rescinded or must otherwise be returned by the Agent or any Lender or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise, all as though such payment had not been made.

SECTION 7.03. Waivers and Acknowledgments.

(a) Each Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of the applicable Guaranteed Obligations and this Guaranty and any requirement that the Agent or any Lender protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Loan Party or any other Person or any Collateral.

(b) Each Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all applicable Guaranteed Obligations whether existing now or in the future.

(c) Each Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by the Agent or any Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Loan Parties, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the obligations of such Guarantor hereunder.

(d) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Agent or any Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party or any of its Subsidiaries now or hereafter known by the Agent or such Lender.

(e) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in Section 7.02 and this Section 7.03 are knowingly made in contemplation of such benefits.

SECTION 7.04. Subrogation. Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against Borrower, any other Loan Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under or in respect of this Guaranty or any other Loan Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Agent or any Lender against Borrower, any other Loan Party or any other guarantor of some or all of the Guaranteed Obligations or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from Borrower, any other Loan Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, all Letters of Credit shall have expired or been terminated and the Commitments shall have expired or been terminated. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the latest of (a) the payment in full in cash of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty, (b) the Termination Date and (c) the latest date of expiration or termination of all Letters of Credit, such amount shall be received and held in trust for the benefit of the Agent and the Lenders, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the applicable Guaranteed Obligations and all other amounts payable under this Guaranty by such Guarantor, whether matured or unmatured, in accordance with the terms of the Loan Documents, or to be held as Collateral for any applicable Guaranteed Obligations or other amounts payable under this Guaranty by such Guarantor thereafter arising. If (i) any Guarantor shall make payment to the Agent or any Lender of all or any part of the applicable Guaranteed Obligations, (ii) all of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty by such Guarantor shall have been paid in full in cash, (iii) the Termination Date shall have occurred and (iv), all Letters of Credit shall have expired or been terminated, the Agent and the Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the applicable Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

SECTION 7.05. Guaranty Supplements. Upon the execution and delivery by any Person of a guaranty supplement in substantially the form of Exhibit E hereto (each, a "Guaranty Supplement"), (a) such Person shall be referred to as an "Additional Guarantor" and shall become and be a Guarantor hereunder, and each reference in this Guaranty to a "Guarantor" shall also mean and be a reference to such Additional Guarantor, and (b) each reference herein to "this Guaranty," "hereunder," "hereof" or words of like import referring to this Guaranty, and each reference in any other Loan Document to the "Guaranty," "thereunder," "thereof" or words of like import referring to this Guaranty, shall mean and be a reference to this Guaranty as supplemented by such Guaranty Supplement.

SECTION 7.06. Subordination. Each Guarantor hereby subordinates any and all debts, liabilities and other obligations owed to such Guarantor by each other Loan Party (the "Subordinated Obligations") to the applicable Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 7.06:

(a) Prohibited Payments, Etc. Except during the continuance of an Event of Default, each Guarantor may receive regularly scheduled payments from any other Loan Party on account of the Subordinated Obligations. After the occurrence and during the continuance of any Event of Default, however, unless the Required Lenders otherwise agree, no Guarantor shall demand, accept or take any action to collect any payment on account of the Subordinated Obligations.

(b) Prior Payment of Guaranteed Obligations. In any proceeding under any Bankruptcy Law relating to any other Loan Party, each Guarantor agrees that the Lenders shall be entitled to receive payment in full in cash of all applicable Guaranteed Obligations (including all interest and expenses accruing after the commencement of a proceeding under any Bankruptcy Law, whether or not constituting an allowed claim in such proceeding ("Post-Petition Interest")) before such Guarantor receives payment of any Subordinated Obligations.

(c) Turn-Over. After the occurrence and during the continuance of any Event of Default, each Guarantor shall, if the Agent (with the consent or at the direction of the Required Lenders) so requests, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Agent and the Lenders and deliver such payments to the Agent on account of the applicable Guaranteed Obligations (including all Post-Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Guaranty.

(d) Agent Authorization. After the occurrence and during the continuance of any Event of Default, the Agent is authorized and empowered (but without any obligation to so do), in its discretion, (i) in the name of each Guarantor, to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and to apply any amounts received thereon to the applicable Guaranteed Obligations (including any and all Post-Petition Interest), and (ii) to require each Guarantor (A) to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and (B) to pay any amounts received on such obligations to the Agent for application to the applicable Guaranteed Obligations (including any and all Post-Petition Interest).

SECTION 7.07. Continuing Guaranty; Assignments. This Guaranty is a continuing guaranty and shall (a) except as provided in the next succeeding sentence, remain in full force and effect until the latest of (i) the payment in full in cash of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty, (ii) the Termination Date and (iii) the latest date of expiration or termination of all Letters of Credit, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Agent and the Lenders and their successors, permitted transferees and permitted assigns. Upon the sale of a Guarantor or any or all of the assets of any Guarantor to the extent permitted in accordance with the terms of the Loan Documents or upon such Guarantor otherwise ceasing to be a Subsidiary of the Company organized under the laws of a state of the United States of America without violation of the terms of this Agreement, such Guarantor (and its Subsidiaries) or such assets shall be automatically released from this Guaranty or any Guaranty Supplement, and all pledges and security interests of the equity of such Guarantor or any Subsidiary of such Guarantor and all other pledges and security interests in the assets of such Guarantor and any of its Subsidiaries shall be released as provided in Section 9.16. Without limiting the generality of clause (c) above, the Agent or any Lender may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, the Revolving Loans owing to it and any Note or Notes held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise, in each case as and to the extent provided in Section 9.08. No Guarantor shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

SECTION 7.08. Qualified ECPs. Each Loan Party that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide 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 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's obligations and undertakings under this Section 7.08 voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until full payment of all Guaranteed Obligations. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Loan Party for all purposes of the Commodity Exchange Act.

ARTICLE VIII THE AGENT

SECTION 8.01. Authorization and Action.

(a) Pursuant to Section 8.07, each Lender hereby irrevocably appoints Bank of America to act on its behalf as the Agent hereunder and under the other Loan Documents, including the Term Loan Intercreditor Agreement, and authorizes the Agent to enter into this Agreement and the other Loan Documents to which it is a party, including the Term Loan Intercreditor Agreement, to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) Each of the Lenders hereby agrees that the Agent in its various capacities under the Term Loan Intercreditor Agreement may take such actions on its behalf as is contemplated by the terms of the Term Loan Intercreditor Agreement. Each Lender hereunder (i) consents to any subordination of Liens provided for in the Term Loan Intercreditor Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Term Loan Intercreditor Agreement, (iii) authorizes and instructs the Agent to enter into the Term Loan Intercreditor Agreement as Agent and on behalf of such Lender and (iv) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of the Term Loan Intercreditor Agreement.

(c) Each of the Lenders hereby agrees that the Agent in its various capacities under the Supplemental Letter of Credit Facility Intercreditor Agreement may take such actions on its behalf as is contemplated by the terms of the Supplemental Letter of Credit Facility Intercreditor Agreement. Each Lender hereunder (i) consents to any subordination of Liens provided for in the Supplemental Letter of Credit Facility Intercreditor Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Supplemental Letter of Credit Facility Intercreditor Agreement, (iii) authorizes and instructs the Agent to enter into the Supplemental Letter of Credit Facility Intercreditor Agreement as Agent and on behalf of such Lender and (iv) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of the Supplemental Letter of Credit Facility Intercreditor Agreement.

(d) The provisions of this Article are solely for the benefit of the Agent, the Issuing Banks, and the Lenders, and neither Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

SECTION 8.02. Agent Individually.

(a) The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any of their Subsidiaries or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

(b) Each Lender understands that the Person serving as Agent, acting in its individual capacity, and its Affiliates (collectively, the "Agent's Group") are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Section 8.02 as "Activities") and may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the Agent's Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in the Borrower, another Loan Party or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Loan Parties or their Affiliates. Each Lender understands and agrees that in engaging in the Activities, the Agent's Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) which information may not be available to any of the Lenders that are not members of the Agent's Group. None of the Agent nor any member of the Agent's Group shall have any duty to disclose to any Lender or use on behalf of the Lenders, and shall not be liable for the failure to so disclose or use, any information whatsoever about or derived from the Activities or otherwise (including any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party) or to account for any revenue or profits obtained in connection with the Activities, except that the Agent shall deliver or otherwise make available to each Lender such documents as are expressly required by any Loan Document to be transmitted by the Agent to the Lenders.

(c) Each Lender further understands that there may be situations where members of the Agent's Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Lenders (including the interests of the Lenders hereunder and under the other Loan Documents). Each Lender agrees that no member of the Agent's Group is or shall be required to restrict its activities as a result of the Person serving as Agent being a member of the Agent's Group, and that each member of the Agent's Group may undertake any Activities without further consultation with or notification to any Lender. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the Agent's Group of information (including Borrower Information) concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) nor (iii) any other matter shall give rise to any fiduciary, equitable or contractual duties (including, without limitation, any duty of trust or confidence) owing by the Agent or any member of the Agent's Group to any Lender including any such duty that would prevent or restrict the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

SECTION 8.03. Duties of Agent; Exculpatory Provisions.

(a) The Agent's duties hereunder and under the other Loan Documents are solely ministerial and administrative in nature and the Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (i) the Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (ii) the Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided, that, the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent or any of its Affiliates to liability or that is contrary to any Loan Document or applicable law and (iii) the Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.01 or 9.03) or (ii) in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until the Company or any Lender shall have given notice to the Agent describing such Default and such event or events.

(c) Neither the Agent nor any member of the Agent's Group shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty, representation or other information made or supplied in or in connection with this Agreement, any other Loan Document or the information presented to the other Lenders by the Company, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith or the adequacy, accuracy and/or completeness of the information contained therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the perfection or priority of any Lien or security interest created or purported to be created by the Collateral Documents or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than (but subject to the foregoing clause (ii)) to confirm receipt of items expressly required to be delivered to the Agent.

(d) Nothing in this Agreement or any other Loan Document shall require the Agent or any of its Related Parties to carry out any "know your customer" or other checks in relation to any Person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or any of its Related Parties.

SECTION 8.04. Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The 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 Revolving Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless an officer of the Agent responsible for the transactions contemplated hereby shall have received notice to the contrary from such Lender prior to the making of such Revolving Loan or the issuance of such Letter of Credit, and in the case of a Borrowing, such Lender shall not have made available to the Agent such Lender's ratable portion of such Borrowing. The Agent may consult with legal counsel (who may be counsel for the Company or any other Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. Indemnification.

(a) Each Lender severally agrees to indemnify the Agent (to the extent not promptly reimbursed by the Company) from and against such Lender's Ratable Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Agreement or any action taken or omitted by the Agent under this Agreement (collectively, the "Indemnified Costs"), provided, that, no Lender shall be liable for any portion of the Indemnified Costs resulting from the Agent's gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its Ratable Share of any reasonable out-of-pocket expenses (including reasonable counsel fees) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, to the extent that the Agent is not promptly reimbursed for such expenses by the Company. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 8.05 applies whether any such investigation, litigation or proceeding is brought by the Agent, any Lender or a third party.

(b) Each Lender severally agrees to indemnify the Issuing Banks (to the extent not promptly reimbursed by the Company) from and against such Lender's Ratable Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against any such Issuing Bank in any way relating to or arising out of the L/C Related Documents or any action taken or omitted by such Issuing Bank hereunder or in connection herewith; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Issuing Bank's gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse any such Issuing Bank promptly upon demand for its Ratable Share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Company under Section 9.04, to the extent that such Issuing Bank is not promptly reimbursed for such costs and expenses by the Company.

(c) The failure of any Lender to reimburse the Agent or any Issuing Bank promptly upon demand for its Ratable Share of any amount required to be paid by the Lenders to the Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Agent or any Issuing Bank for its Ratable Share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Agent or any Issuing Bank for such other Lender's Ratable Share of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section 8.05 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes. Each of the Agent and each Issuing Bank agrees to return to the Lenders their respective Ratable Shares of any amounts paid under this Section 8.05 that are subsequently reimbursed by the Company.

SECTION 8.06. Delegation of Duties. The 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 co-agents or sub-agents appointed by the Agent. The Agent and any such co-agent or sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Each such co-agent and sub-agent and the Related Parties of the Agent and each such co-agent and sub-agent (including their respective Affiliates in connection with the syndication of the Revolving Credit Facility) shall be entitled to the benefits of all provisions of this Article VIII and Article IX (as though such co-agents and sub-agents were the "Agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 8.07. Resignation of Agent.

(a) The Agent may at any time give notice of its resignation to the Lenders and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. 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 Agent gives notice of its resignation (such thirty (30)-day period, the "Lender Appointment Period"), then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above. In addition and without any obligation on the part of the retiring Agent to appoint, on behalf of the Lenders, a successor Agent, the retiring Agent may at any time upon or after the end of the Lender Appointment Period notify the Company and the Lenders that no qualifying Person has accepted appointment as successor Agent and the effective date of such retiring Agent's resignation. Upon the resignation effective date established in such notice and regardless of whether a successor Agent has been appointed and accepted such appointment, the retiring Agent's resignation shall nonetheless become effective and (i) the retiring Agent shall be discharged from its duties and obligations as Agent hereunder and under the other Loan Documents and (ii) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties as Agent of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations as Agent hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Company to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

(b) Any resignation pursuant to this Section by a Person acting as Agent shall, unless such Person shall notify the Company and the Lenders otherwise, also act to relieve such Person and its Affiliates of any obligation to issue new, or extend existing, Letters of Credit where such issuance or extension is to occur on or after the effective date of such resignation. Upon the acceptance of a successor's appointment as Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (ii) the retiring Issuing Bank shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents arising on or after the effective date of such successor's appointment, and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

SECTION 8.08. Non-Reliance on Agent and Other Lenders.

(a) Each Lender confirms to the Agent, each other Lender and each of their respective Related Parties that it (i) possesses (individually or through its Related Parties) such knowledge and experience in financial and business matters that it is capable, without reliance on the Agent, any other Lender or any of their respective Related Parties, of evaluating the merits and risks (including tax, legal, regulatory, credit, accounting and other financial matters) of (x) entering into this Agreement, (y) making Revolving Loans and other extensions of credit hereunder and under the other Loan Documents and (z) in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risks and (iii) has determined that entering into this Agreement and making Revolving Loans and other extensions of credit hereunder and under the other Loan Documents is suitable and appropriate for it.

(b) Each Lender acknowledges that (i) it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents, (ii) that it has, independently and without reliance upon the Agent, any other Lender or any of their respective Related Parties, made its own appraisal and investigation of all risks associated with, and its own credit analysis and decision to enter into, this Agreement based on such documents and information, as it has deemed appropriate and (iii) it will, independently and without reliance upon the Agent, any other Lender or any of their respective Related Parties, continue to be solely responsible for making its own appraisal and investigation of all risks arising under or in connection with, and its own credit analysis and decision to take or not take action under, this Agreement and the other Loan Documents based on such documents and information as it shall from time to time deem appropriate, which may include, in each case:

(A) the financial condition, status and capitalization of the Company and each other Loan Party;

(B) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Loan Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document;

(C) determining compliance or non-compliance with any condition hereunder to the making of a Revolving Loan, or the issuance of a Letter of Credit and the form and substance of all evidence delivered in connection with establishing the satisfaction of each such condition;

(D) the adequacy, accuracy and/or completeness of any information delivered by the Agent, any other Lender or by any of their respective Related Parties under or in connection with this Agreement or any other Loan Document, the transactions contemplated hereby and thereby or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document.

SECTION 8.09. No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Persons acting as, Arranger or bookrunner or syndication agent 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 a Lender hereunder.

SECTION 8.10. Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Bankruptcy Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Revolving Loan or Letter of Credit Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the 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 Revolving Loans, Letter of Credit Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Agent hereunder) 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, interim receiver, monitor, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders and Issuing Bank, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent hereunder.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition or proposal affecting the Obligations or the rights of any Lender or Issuing Bank to authorize the Agent to vote in respect of the claim of any Lender or Issuing Bank or in any such proceeding.

SECTION 8.11. Intercreditor Arrangements. Each of the Lenders hereby authorizes and directs the Agent to enter into one or more Intercreditor Agreements (subject to Section 8.01, other than the Term Loan Intercreditor Agreement and the Supplemental Letter of Credit Facility Intercreditor Agreement) on behalf of such Lender, with the consent of Required Lenders. Each of the Lenders hereby agrees that the Agent in its various capacities thereunder may take such actions on its behalf as is contemplated by the terms of any such Intercreditor Agreements. With respect to any such Intercreditor Agreement executed and delivered by the Agent in accordance with this Agreement, each Lender hereunder (a) consents to any subordination of Liens provided for in such Intercreditor Agreement, (b) agrees that it will be bound by and will take no actions contrary to the provisions of such Intercreditor Agreement, (c) authorizes and instructs the Agent to enter into such Intercreditor Agreement as Agent and on behalf of such Lender and (d) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of such Intercreditor Agreement.

SECTION 8.12. [Reserved].

SECTION 8.13. Bank Product Obligations.

(a) Each Bank Product Provider shall be deemed a third party beneficiary of the provisions of the Loan Documents for purposes of any reference in a Loan Document to the parties for whom the Agent is acting. The Agent hereby agrees to act as agent for such Bank Product Providers and, as a result of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed the Agent as its agent and to have accepted the benefits of the Loan Documents; provided, that, the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and guarantees granted to the Agent and the right to share in proceeds of the Collateral as more fully set forth in the Loan Documents. In addition, each Bank Product Provider, as a result of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that the Agent shall have the right, but shall have no obligation, to establish, maintain, reduce, or release Reserves in respect of the Bank Product Obligations and that if Reserves are established there is no obligation on the part of the Agent to determine or insure whether the amount of any such Reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, the Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to the Agent as to the amounts that are due and owing to it and such written certification is received by the Agent a reasonable period of time prior to the making of such distribution. The Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, the Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to the Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Any Loan Party or any of its Subsidiaries may obtain Bank Products from any Bank Product Provider, although no Loan Party or any of its Subsidiaries is required to do so. Each Loan Party acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Bank Product Provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the Bank Product Provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such Bank Product Provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

(b) [Reserved].

(c) Each Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by the Loan Documents, including Sections 6.04, 8.13 and 9.02(d). Each Bank Product Provider, shall severally, shall indemnify and hold harmless Agent or any of its Related Parties, to the extent not reimbursed by Loan Parties, against all claims that may be incurred by or asserted against Agent or any of its Related Parties in connection with such provider's Bank Product Obligations.

(d) No Bank Product Provider that obtains the benefits of Section 6.04, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article VIII to the contrary, the Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations.

SECTION 8.14. Parallel Debt and Dutch Security Rights. For the purpose of ensuring and preserving the validity and continuity of the security rights to be granted pursuant to Security Documents that are governed by the laws of The Netherlands (including, but not limited to, a Dutch notarial deed of pledge relating to shares in the share capital of Eastman Kodak Holdings B.V.), the parties hereto agree as follows:

(a) The Borrower hereby irrevocably and unconditionally undertakes to pay to Agent, as creditor in its own right and acting on its own behalf, and not as agent or representative of any other person, amounts equal to and in the currency of the amounts payable by the Borrower to the Lenders in respect of the Obligations of the Borrower (other than under the Parallel Debt (as defined hereafter)) from time to time as and when such amounts fall due for payment (the "Parallel Debt").

(b) Each of the parties hereto acknowledges that:

(i) the Parallel Debt represents Agent's own separate and independent claim to receive payment of the Parallel Debt from the Borrower; and

(ii) the Parallel Debt constitutes an undertaking, obligation and liability of the Borrower to Agent which is transferable, separate and independent from, and without prejudice to, the Obligations of the Borrower,

(iii) it being understood that the amounts owed by the Borrower to the Agent under this Agreement shall at any time never exceed the aggregate of the amounts owed by the Borrower to the Lenders under the Obligations of the Borrower at any such time.

(c) The Parallel Debt will become due and payable as and to the extent one or more of the Obligations of the Borrower becomes due and payable, without any further notice being required.

(d) To the extent Agent irrevocably received any amount in payment of the Parallel Debt (the "Received Amount"), the Obligations of the Borrower shall be reduced by an aggregate amount equal to the Received Amount as if the Received Amount was received as a payment of such Obligations."

SECTION 8.15. Certain Matters Relating to German Law. In relation to the German Security Agreements, the following additional provisions shall apply:

(a) The Agent, with respect to the part of the Collateral secured pursuant to the German Security Agreements or any other Collateral created under German law ("German Collateral"), shall:

(i) hold, administer and realize such German Collateral that is transferred or assigned by way of security (*Sicherungsseigentum/Sicherungsabtretung*) or otherwise granted to it and is creating or evidencing a non-accessory security right (*nicht akzessorische Sicherheit*) in its own name as trustee (*Treuhänder*) for the benefit of the Secured Parties; and

(ii) hold, administer, and realize any such German Collateral that is pledged (*verpfändet*) or otherwise transferred to the Agent and is creating or evidencing an accessory security right (*akzessorische Sicherheit*) as agent.

(b) With respect to the German Collateral, each Secured Party hereby authorizes and grants a power of attorney (*Vollmacht*) to the Agent (whether or not by or through employees or agents) to:

(i) accept as its representative (*Stellvertreter*) any pledge or other creation of any accessory security right granted in favor of such Secured Party in connection with the German Security Agreements and to agree to and execute on its behalf as its representative (*Stellvertreter*) any amendments and/or alterations to any German Security Agreements or any other agreement related to such German Collateral which creates a pledge or any other accessory security right (*akzessorische Sicherheit*) including the release or confirmation of release of such security;

(ii) execute on behalf of itself and the Secured Parties where relevant and without the need for any further referral to, or authority from, the Secured Parties or any other person all necessary releases of any such German Collateral secured under the German Security Agreements or any other agreement related to such German Collateral;

(iii) realize such Collateral in accordance with the German Security Agreements or any other agreement securing such German Collateral;

(iv) make, receive all declarations and statements and undertake all other necessary actions and measures which are necessary or desirable in connection with such German Collateral or the German Security Agreements or any other agreement securing the German Collateral;

(v) take such action on its behalf as may from time to time be authorized under or in accordance with the German Security Agreements; and

(vi) to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Secured Parties under the German Security Agreements together with such powers and discretions as are reasonably incidental thereto.

(c) Each of the Secured Parties agrees that, if the courts of Germany do not recognize or give effect to the trust expressed to be created by this Agreement or any Collateral Document, the relationship of the Secured Parties to the Agent shall be construed as one of principal and agent but, to the extent permissible under the laws of Germany, all the other provisions of this Agreement shall have full force and effect between the parties hereto.

(d) Each Secured Party hereby ratifies and approves all acts and declarations previously done by the Agent on such person's behalf (including for the avoidance of doubt the declarations made by the Agent as representative without power of attorney (*Vertreter ohne Vertretungsmacht*) in relation to the creation of any pledge (*Pfandrecht*) on behalf and for the benefit of each Secured Party as future pledgee¹ or otherwise).

¹ S. gesonderten Abschnitt V. dazu

(e) For the purpose of performing its rights and obligations as Agent and to make use of any authorization granted under the German Security Agreements, each Secured Party hereby authorizes the Agent to act as its agent (*Stellvertreter*), and releases the Agent from any restrictions on representing several persons and self-dealing under any applicable law, and in particular from the restrictions of Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*). The Agent has the power to grant sub-power of attorney, including the release from the restrictions of section 181 of the German Civil Code.

SECTION 8.16. German Parallel Debt.

(a) The Borrower hereby irrevocably and unconditionally undertakes (and to the extent necessary undertakes in advance) to pay to the Agent amounts equal to any amounts owing from time to time by the Borrower to any Secured Party under this Agreement and any other Loan Document pursuant to any Obligations as and when those amounts are due under any Loan Document (such payment undertakings under this Section 8.16 and the obligations and liabilities resulting therefrom being the "Parallel Debt").

(b) The Agent shall have its own independent right to demand payment of the Parallel Debt by the Borrower. The Borrower and the Agent acknowledge that the obligations of the Borrower under this Section 8.16 are several, separate and independent (*selbständiges Schuldanerkenntnis*) from, and shall not in any way limit or affect, the corresponding obligations of the Borrower to any Secured Party under this Agreement or any other Loan Document (the "Corresponding Debt") nor shall the amounts for which the Borrower is liable under this Section 8.16 be limited or affected in any way by its Corresponding Debt provided that:

(i) the Parallel Debt shall be decreased to the extent that the Corresponding Debt has been irrevocably paid or discharged (other than, in each case, contingent obligations);

(ii) the Corresponding Debt shall be decreased to the extent that the Parallel Debt has been irrevocably paid or discharged;

(iii) the amount of the Parallel Debt shall at all times be equal to the amount of the Corresponding Debt; and

(iv) for the avoidance of doubt, the Parallel Debt will become due and payable at the same time when the Corresponding Debt becomes due and payable.

(c) The security granted under any German Security Agreement with respect to the Parallel Debt is granted to the Agent in its capacity as sole creditor of the Parallel Debt.

(d) Without limiting or affecting the Agent's rights against the Borrower (whether under this Agreement or any other Loan Document), the Borrower acknowledges that:

(i) Nothing in this Agreement shall impose any obligation on the Agent to advance any sum to the Borrower or otherwise under any Loan Document; and

(ii) for the purpose of any vote taken under any Loan Document, the Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Lender.

(e) The parties to this Agreement acknowledge and confirm that the provisions contained in this Agreement shall not be interpreted so as to increase the maximum total amount of the Obligations.

(f) The Parallel Debt shall remain effective in case a third person should assume or be entitled, partially or in whole, to any rights of any of the Lenders under any of the other Loan Documents, be it by virtue of assignment, novation or otherwise.

(g) All monies received or recovered by the Agent pursuant to this Agreement and all amounts received or recovered by the Agent from or by the enforcement of any security granted to secure the Parallel Debt shall be applied in accordance with this Agreement.

ARTICLE IX
MISCELLANEOUS

SECTION 9.01. Amendments, Waivers. No amendment or waiver of any provision of this Agreement or any of the other Loan Documents, nor consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that

(a) no amendment, waiver or consent shall, unless in writing and signed by all the Lenders, do any of the following:

(i) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Revolving Loans, or the number of Lenders, that shall be required for the Lenders or any of them to take any action hereunder,

(ii) release all or substantially all of the Collateral in any transaction or series of related transactions,

(iii) release one or more Guarantors (or otherwise limit such Guarantors' liability with respect to the Obligations owing to the Agent, and the Lenders under the Guaranties) if such release or limitation is in respect of all or substantially all of the value of the Guaranties, taken as a whole, to the Lenders,

(iv) amend this Section 9.01 or the definition of "Required Lenders", "Supermajority 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,

(v) change Section 2.05(a) in a manner that would alter the pro rata reduction or termination of Commitments required thereby,

(vi) increase the advance rates set forth in the definition of "Loan Value";

(vii) amend, modify or change the provisions of Section 6.04 (including to change the order of application of any reduction in the Commitments or any prepayment of Revolving Loans among the Facilities from the application thereof) without the written consent of each Lender; or

(viii) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Debt or Lien, as the case may be,

(b) no amendment, waiver or consent shall, unless in writing and signed by each Lender affected thereby, do any of the following:

(i) increase the Commitment of such Lender,

(ii) reduce or forgive the principal of, or interest on, the Revolving Loans or any fees or other amounts payable hereunder,

(iii) postpone any date fixed for any payment of principal of, or interest on, the Revolving Loans or any fees or other amounts payable hereunder, or

(iv) [reserved], or

(c) no amendment, waiver or consent shall, unless in writing and signed by the Supermajority Lenders, add new asset categories to the Borrowing Base or otherwise cause the Borrowing Base or availability under the Revolving Credit Facility provided for herein to be increased (other than changes in Reserves implemented by the Agent in its Permitted Discretion, and the changes to the advance rates set forth in the definition of Loan Value); provided, further, that (x) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Agent under this Agreement or any Note and (y) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Banks in addition to the Lenders required above to take such action, adversely affect the rights or obligations of the Issuing Banks in their capacities as such under this Agreement, provided, however, notwithstanding clauses (ii) and (iii) of clause (a) above, no consent or waiver or other approval of any Lender shall be required for any release of a Guaranty or Guaranty Supplement as provided in Section 7.07 or any release of Collateral as provided in Section 9.16 or in any Collateral Document.

Notwithstanding the foregoing, if the Agent and the Borrower shall have jointly identified any ambiguity, inconsistency, defect, typographical error or manifest error in this Agreement or any other Loan Document, then the Agent and the Borrower shall be permitted to amend such provision without any further action or consent of any other party.

SECTION 9.02. Notices, Etc.

(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 telecopier 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, the Agent, or any Issuing Bank, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 9.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to 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 telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided, that, the foregoing shall not apply to notices to any Lender or Issuing Bank pursuant to Article II if such Lender or Issuing Bank, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that, approval of such procedures may be limited to particular notices or communications.

(c) Electronic Communications. Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided, that, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) 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 LOAN PARTY MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE LOAN PARTY MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE LOAN PARTY MATERIALS OR THE PLATFORM. In no event shall the Agent, any Arranger or any of their respective Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, any Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Agent's or the Arrangers' transmission of Loan Party Materials 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 bad faith, gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(e) Change of Address, Etc. Each of the Borrower, the Agent and each Issuing Bank may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier 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 Loan Party Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or their securities for purposes of United States Federal or state securities laws.

(f) Reliance by Agent, Issuing Banks and Lenders. The Agent, the Issuing Banks and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing) purportedly given by or on behalf of the 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. The Borrower shall indemnify the Agent, each Issuing Bank, 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 the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

SECTION 9.03. No Waiver; Remedies. No failure on the part of any Lender or the Agent to exercise, and no delay in exercising, any right hereunder or under any Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right 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.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 6.01 for the benefit of all the Lenders and the Issuing Banks; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) each Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 9.06 (subject to the terms of Section 2.15), 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 Bankruptcy Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Article VI and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.15, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 9.04. Costs and Expenses.

(a) The Company agrees to pay on demand all reasonable out of pocket costs and expenses of the Agent, and each Issuing Bank in connection with the preparation, execution, delivery, administration, modification and amendment of this Agreement, the Notes and the other documents to be delivered hereunder, including, without limitation, (A) all due diligence, syndication (including printing, distribution and bank meetings), transportation, computer, duplication, appraisal, consultant, and audit expenses, (B) the reasonable fees and expenses of counsel for the Agent, and each Issuing Bank with respect thereto, (C) fees and expenses incurred in connection with the creation, perfection or protection of the liens under the Loan Documents (including all reasonable search, filing and recording fees) and (D) costs associated with insurance reviews, Collateral audits, field exams, collateral valuations and collateral reviews to the extent provided herein, provided, however, the Company shall not be required to pay fees or expenses of more than one counsel in any jurisdiction where the Collateral is located, with respect to advising such Agent, and each Issuing Bank as to its rights and responsibilities, or the perfection, protection or preservation of rights or interests, under the Loan Documents, with respect to negotiations with any Loan Party or with other creditors of any Loan Party or any of its Subsidiaries arising out of any Default or any events or circumstances that may give rise to a Default and with respect to presenting claims in or otherwise participating in or monitoring any bankruptcy, insolvency or other similar proceeding involving creditors' rights generally and any proceeding ancillary thereto. The Company further agrees to pay on demand all costs and expenses of the Agent, each Issuing Bank and each Lender, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of the Loan Documents, whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally, including, without limitation, reasonable fees and expenses of counsel for the Agent, each Issuing Bank and each Lender in connection with the enforcement of rights under this Agreement and the other Loan Documents.

(b) The Company agrees to indemnify and hold harmless the Agent, each Arranger, each Issuing Bank and each Lender and each of their Related Parties (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of outside counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (i) the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Revolving Loans or Letters of Credit (which, for the avoidance of doubt, does not include any Taxes or Other Taxes which shall be governed by Section 2.14) or (ii) the actual or alleged presence of Hazardous Materials on any property of the Company or any of its Subsidiaries or any Environmental Action relating in any way to the Company or any of its Subsidiaries, except to the extent such claim, damage, loss, liability or expense resulted from such Indemnified Party's gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 9.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Company and each Indemnified Party agrees not to assert any claim for special, indirect, consequential or punitive damages against the Company, the Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, arising out of or otherwise relating to the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Revolving Loans.

(c) If any payment of principal of, or Conversion of, any Term SOFR Revolving Loan is made by Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Revolving Loan, as a result of a payment or Conversion pursuant to Section 2.08(d) or (e), 2.10 or 2.12, acceleration of the maturity of the Notes pursuant to Section 6.01 or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of the Interest Period for such Revolving Loan upon an assignment of rights and obligations under this Agreement pursuant to Section 9.08 as a result of a demand by the Company pursuant to Section 9.08(a), Borrower shall, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Revolving Loan.

(d) Without prejudice to the survival of any other agreement of any Loan Party hereunder or under any other Loan Document, the agreements and obligations of the Borrower contained in Sections 2.11, 2.14 and 9.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes.

(e) No Indemnified Party 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 Indemnified Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Party as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(f) All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(g) The agreements in this Section shall survive the resignation of the Agent, and any Issuing Bank, the replacement of any Lender, the termination of the aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

SECTION 9.05. Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to the Agent, any Issuing Bank or any Lender, or the Agent, any Issuing Bank or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, such Issuing Bank or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Bankruptcy Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each Issuing Bank severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the 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 the Issuing Banks under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 9.06. Right of Set-off. Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Agent to declare the Revolving Loans due and payable pursuant to the provisions of Section 6.01, the Agent, each Issuing Bank, and each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Agent, such Issuing Bank, or such Lender or 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 and any Note held by the Agent, such Issuing Bank, or such Lender, whether or not such Lender shall have made any demand under this Agreement or such Note and although such obligations may be unmatured, provided, however, that no such right shall exist against any deposit designated as being for the benefit of any Governmental Authority, provided, further, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.19 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower after any such set-off and application, provided, that, the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender, the Agent, each Issuing Bank, and each such Affiliate under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that the Agent, the Issuing Banks, the Lenders or such Affiliates may have.

SECTION 9.07. Binding Effect. This Agreement shall become effective in accordance with Section 3.01 and thereafter shall be binding upon and inure to the benefit of the Borrower, the Agent, and each Lender and their respective successors and assigns, except that Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of all of the Lenders.

SECTION 9.08. Assignments and Participations.

(a) Each Lender may, with the consent of the Agent (not to be unreasonably withheld or delayed) in the case of an assignment to a Person who is not an Affiliate of such Lender and, if demanded by the Company so long as no Event of Default shall have occurred and be continuing and only with respect to any Affected Lender, upon at least five (5) Business Days' notice to such Lender and the Agent, shall, assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment or Commitments, the Revolving Loans owing to it, its participations in Letters of Credit, if any, and the Note or Notes held by it); provided, however, that (i) each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under this Agreement with respect to one or more Facilities, (ii) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender, or an assignment of all of a Lender's rights and obligations under this Agreement, the amount of (x) the Revolving Credit Commitment of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof and (y) the Unissued Letter of Credit Commitment of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than \$1,000,000 or an integral multiple of \$1,000,000 in excess thereof, in each case, unless the Company and the Agent otherwise agree, (iii) each such assignment shall be to an Eligible Assignee, (iv) each such assignment made as a result of a demand by the Company pursuant to this Section 9.08(a) shall be arranged by the Company after consultation with the Agent and shall be either an assignment of all of the rights and obligations of the assigning Lender under this Agreement or an assignment of a portion of such rights and obligations made concurrently with another such assignment or other such assignments that together cover all of the rights and obligations of the assigning Lender under this Agreement, (v) no Lender shall be obligated to make any such assignment as a result of a demand by the Company pursuant to this Section 9.08(a) unless and until such Lender shall have received one or more payments from either the Borrower or one or more Eligible Assignees in an aggregate amount at least equal to the aggregate outstanding principal amount of the Revolving Loans owing to such Lender, together with accrued interest thereon to the date of payment of such principal amount and all other amounts payable to such Lender under this Agreement, and (vi) the parties to each such assignment shall execute and deliver to the Agent, for its acceptance and recording in the Register, an Assignment and Acceptance (and the assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire), together with any Note subject to such assignment and a processing and recordation fee of \$3,500 payable by the parties to each such assignment; provided, however, that (x) only one such fee shall be payable in connection with simultaneous assignments to or by two or more Approved Funds with respect to a Lender and (y) in the case of each assignment made as a result of a demand by the Company, such recordation fee shall be payable by the Company except that no such recordation fee shall be payable in the case of an assignment made at the request of the Company to an Eligible Assignee that is an existing Lender. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Sections 2.11, 2.14 and 9.04 to the extent any claim thereunder relates to an event arising prior to such assignment) and be released from its obligations (other than its obligations under Section 9.06 to the extent any claim thereunder relates to an event arising prior to such assignment) under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under any Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Section 5.01(h) and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to the Agent by the terms hereof, together with such powers and discretion as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(c) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with any Note or Notes subject to such assignment, the Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit C hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Company

(d) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Agent, the applicable pro rata share of Revolving Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Revolving Loans and participations in Letters of Credit in accordance with its Ratable Share. 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.

(e) The Agent shall maintain at its address referred to in Section 9.02 a copy of each Assumption Agreement and each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Revolving Loans owing to, each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(f) Each Lender may sell participations to one or more banks or other entities (other than the Company or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment, the Revolving Loans owing to it and any Note or Notes held by it); provided, however, that (i) such Lender's obligations under this Agreement (including, without limitation, its Commitment to the Borrower hereunder) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of any such Note for all purposes of this Agreement, (iv) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (v) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, provided, however, that any agreement between a Lender and such participant may provide that the Lender will not, without the consent of participant, agree to any such amendment, waiver or consent which would reduce the principal of, or interest on, the Revolving Loans or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, the Revolving Loans or any fees or other amounts payable hereunder, in each case to the extent subject to such participation.

(g) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.08, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; provided, that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of Borrower Information relating to the Borrower received by it from such Lender.

(h) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank; provided, that, no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

(i) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register in the United States 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, Commitments or other obligations under this Agreement (the "Participant Register"); provided, that, no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans, or its other obligations under this Agreement) except to the extent that such disclosure is necessary to establish that the Loans are in registered form under Treas. Reg. § 5f.103-1(c). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as owner of such participation for all purposes of this Agreement.

(j) The Agent may conclusively rely on the list of Disqualified Institutions provided by the Borrower (or any supplement thereto) for all purposes of this Agreement and the other Loan Documents, including in approving or declining to approve a Person as an Eligible Assignee, executing and delivering any Assignment and Acceptance, making any recording in the Register in respect of such Assignment and Acceptance or otherwise, and shall have no liability of any kind to any Loan Party or any Affiliate thereof, any Lender or any other Person if such list of Disqualified Institutions (or any supplement thereto) is incorrect or if any Person is incorrectly identified in such list of Disqualified Institutions (or any supplement thereto) as a Person to whom no assignment is to be made.

SECTION 9.09. Confidentiality. Neither the Agent nor any Lender may disclose to any Person any confidential, proprietary or non-public information of any Loan Party furnished to the Agent or the Lenders by any Loan Party, including, without limitation (1) earnings and other financial information and forecasts, budgets, projections, plans, (including, without limitation, any confirmations of publicly disclosed advice regarding any material matter); (2) mergers, acquisitions, tender offers, joint ventures or changes in assets; (3) new products or discoveries or developments regarding any Loan Party's customers or suppliers; (4) changes in control or in management; (5) changes in auditors or auditor notifications to the Loan Party; (6) securities redemptions, splits, repurchase plans, changes in dividends, changes in rights of holders or sales of additional securities; and (7) negative news relating to such matters as physical damage to properties from significant events, loss of significant contractual relationship, material litigation, defaults under contracts or securities, bankruptcy or receivership (such information being referred to collectively herein as the "Borrower Information"), except that each of the Agent, and each of the Lenders may disclose Borrower Information (i) to its Affiliates and to its and its Affiliates' managers, administrators, partners, employees, trustees, officers, directors, agents, advisors and other representatives solely for purposes of this Agreement, any Notes and the transactions contemplated hereby (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of Borrower Information and instructed to keep such Borrower Information confidential on terms substantially no less restrictive than those provided herein), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulating authority, such as the National Association of Insurance Commissioners), provided, to the extent permitted by law and practicable under the circumstances, the Agent or such Lender shall provide the Company with prompt notice of such requested disclosure so that the Company may seek a protective order prior to the time when the Agent or such Lender is required to make such disclosure, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, provided, to the extent permitted by law and practicable under the circumstances, the Agent or such Lender shall provide the Company with prompt notice of such requested disclosure so that the Company may seek a protective order prior to the time when the Agent or such Lender is required to make such disclosure, (iv) subject to this Section 9.09, to any other Lender to this Agreement which has requested such information, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions no less restrictive than those of this Section 9.09, to any assignee or participant or prospective assignee or participant or any pledge referred to in Section 9.08(h), (vii) to the extent such Borrower Information (A) is or becomes generally available to the public on a non-confidential basis other than as a result of a breach of this Section 9.09 by the Agent or such Lender, or (B) is or becomes legally available to the Agent or such Lender on a nonconfidential basis from a source other than a Loan Party, provided, that, the source of such information was not known by the Agent or such Lender to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligations of confidentiality to a Loan Party or any other party with respect to such information, (viii) with the consent of the Company, (ix) to any party hereto and (x) subject to the Agent's or the applicable Lender's receipt of an agreement containing provisions no less restrictive than those of this Section, to any actual or prospective party (or its managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives) to any swap, derivative or other transaction under which payments are to be made by reference to the Company and its Obligations, this Agreement or payments hereunder. Any Person required to maintain the confidentiality of Borrower Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Borrower Information as such Person would accord to its own confidential information.

SECTION 9.10. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or in .pdf (or similar electronic format) shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent, and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf and notwithstanding that the Agent, or any Lender may have had notice or knowledge of any Default at the time of any Revolving Loan, and shall continue in full force and effect as long as any Revolving Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

SECTION 9.12. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 9.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Bankruptcy Laws, as determined in good faith by the Agent or the Issuing Banks, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

SECTION 9.13. Jurisdiction.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION 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 OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE AGENT, ANY LENDER OR ANY ISSUING BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTIES OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.14. No Liability of the Issuing Banks. Each Lender and each Loan Party agree that, in paying any drawing under a Letter of Credit, no Issuing Bank shall have any responsibility to obtain any document, other than any sight draft, certificates and documents expressly required by the Letter of Credit, or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. Each Loan Party assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither an Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by such Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against such Issuing Bank, and such Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Company that the Company proves were caused by such Issuing Bank's willful misconduct or gross negligence as found in a final non-appealable judgment by a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and no Issuing Bank shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; provided, that, nothing herein shall be deemed to excuse such Issuing Bank if it acts with gross negligence or willful misconduct in accepting such documents as found in a final non-appealable judgment by a court of competent jurisdiction.

SECTION 9.15. PATRIOT Act Notice. Each Lender, and the Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify such Loan Party in accordance with the PATRIOT Act. Each Loan Party shall provide such information and take such actions as are reasonably requested by the Agent or any Lenders in order to assist the Agent and the Lenders in maintaining compliance with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

SECTION 9.16. Release of Collateral; Termination of Loan Documents.

(a) (i) Upon the sale, lease, transfer or other Disposition of any item of Collateral of any Loan Party in accordance with the terms of the Loan Documents, including, without limitation, as a result of the sale, in accordance with the terms of the Loan Documents, of the Loan Party that owns such Collateral, (ii) upon a Subsidiary being designated an Immaterial Subsidiary or an Excluded Subsidiary, in accordance with the Loan Documents, (iii) at any time a Loan Party's guarantee of the obligations under the Loan Documents ceases as provided in Section 7.07, the security interests granted by the Loan Documents with respect to such items of Collateral and/or Loan Party shall immediately terminate and automatically be released (so long as in the case of Dispositions by any Loan Party pursuant to the terms of the Loan Documents (other than Dispositions of Collateral not comprising TMM Assets) and in respect of clauses (ii) and (iii) above, Agent has received a written certification by Borrower that such Disposition or other transaction, as applicable is permitted under the terms of the Loan Documents (and Agent shall be entitled to rely conclusively upon such certification without further inquiry)), and the Agent will, at the Company's expense, execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents.

(b) Upon the latest of (i) the payment in full in cash of all Obligations under the Loan Documents, (ii) the termination in full of the Commitments and (iii) the latest date of expiration or termination of all Letters of Credit (or receipt by the Agent of an irrevocable notice from each Issuing Bank with a Letter of Credit outstanding that it will not seek to enforce any rights that it has or may have in accordance with Section 2.03 against the Agent or the Lenders), (x) except as otherwise specifically stated in this Agreement or the other Loan Documents, this Agreement and the other Loan Documents shall terminate and be of no further force or effect, (y) the Agent shall release or cause the release of all Collateral from the Liens of the Loan Documents and the Guarantors of all Obligations under each Guaranty, and will, at the Company's expense, execute and deliver such documents as the Company may reasonably request to evidence the release of Collateral from the assignment and security interest granted under the Collateral Documents and the obligations of the Guarantors and (z) each Lender that has requested and received a Note shall return such Note to the Company marked "cancelled" or "paid in full"; provided, however, that the Lenders' obligations under Section 9.09 shall continue until the earlier of (x) the date that is three (3) years after the termination of this Agreement and (y) the date that is three (3) months after the latest date that is the subject of the Projections delivered in accordance with Section 5.01(h)(viii), and the Lender's obligations under this Section 9.16 shall survive until satisfied.

SECTION 9.17. Judgment Currency.

(a) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Agent could purchase Dollars with such other currency at the exchange rate on the Business Day preceding that on which final judgment is given.

(b) The obligation of each Loan Party in respect of any sum due from it in any currency (the "Primary Currency") to any Lender or the Agent hereunder shall, notwithstanding any judgment in any other currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Agent (as the case may be), of any sum adjudged to be so due in such other currency, such Lender or the Agent (as the case may be) may in accordance with normal banking procedures purchase the applicable Primary Currency with such other currency; if the amount of the applicable Primary Currency so purchased is less than such sum due to such Lender or the Agent (as the case may be) in the applicable Primary Currency, each Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Agent (as the case may be) against such loss, and if the amount of the applicable Primary Currency so purchased exceeds such sum due to any Lender or the Agent (as the case may be) in the applicable Primary Currency, such Lender or the Agent (as the case may be) agrees to remit to such Loan Party such excess.

SECTION 9.18. No Fiduciary Duty. 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), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agent, the Arrangers and the Lenders are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Loan Parties are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agent, the Arrangers and the Lender each are and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, have not been, are not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Agent, the Arrangers nor the Lenders have any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Agent, the Arrangers nor the Lenders have any obligation to disclose any of such interests to the Loan Parties or their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Agent, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.19. Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assumption Agreement or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act or similar foreign laws.

SECTION 9.20. 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 the parties, each party hereto (including each Secured Party) acknowledges that any liability arising under a Loan Document of any Secured Party that is an Affected Financial Institution, to the extent such liability is 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 under any Loan Documents which may be payable to it by any Secured Party that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including:
 - (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 any 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.

SECTION 9.21. No Novation. The terms and conditions of the Existing Credit Agreement are amended as set forth in, and restated in their entirety and superseded by, this Agreement. Nothing in this Agreement shall be deemed to be a novation of any of the Obligations as defined in the Existing Credit Agreement or in any way impair or otherwise affect the rights or obligations of the parties thereunder (including with respect to Revolving Loans and representations and warranties made thereunder) except as such rights or obligations are amended or modified hereby. Notwithstanding any provision of this Agreement or any other Loan Document or instrument executed in connection herewith, the execution and delivery of this Agreement and the incurrence of Obligations hereunder shall be in substitution for, but not in payment of, the Obligations owed by the Loan Parties under the Existing Credit Agreement. The Existing Credit Agreement as amended and restated hereby shall be deemed to be a continuing agreement among the parties, and all documents, instruments and agreements delivered pursuant to or in connection with the Existing Credit Agreement not amended and restated in connection with the entry of the parties into this Agreement shall remain in full force and effect, each in accordance with its terms, as of the date of delivery or such other date as contemplated by such document, instrument or agreement to the same extent as if the modifications to the Existing Credit Agreement contained herein were set forth in an amendment to the Existing Credit Agreement in a customary form, unless such document, instrument or agreement has otherwise been terminated or has expired in accordance with or pursuant to the terms of this Agreement, the Existing Credit Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto. From and after the Closing Date, each reference to the "Agreement", "Credit Agreement" or other reference originally applicable to the Existing Credit Agreement contained in any Loan Document shall be a reference to this Agreement, as amended, supplemented, restated or otherwise modified from time to time.

SECTION 9.22. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

EASTMAN KODAK COMPANY

By: /s/ Matthew C. Ebersold
Name: Matthew C. Ebersold
Title: Treasurer

EASTMAN KODAK INTERNATIONAL CAPITAL
COMPANY INC.
FAR EAST DEVELOPMENT LTD.
KODAK (NEAR EAST), INC.
KODAK AMERICAS, LTD.

By: /s/ Matthew C. Ebersold
Name: Matthew C. Ebersold
Title: Treasurer

KODAK PHILIPPINES, LTD.

By: /s/ Matthew C. Ebersold
Name: Matthew C. Ebersold
Title: Treasurer

[Signature Page to Amended and Restated ABL Credit Agreement]

BANK OF AMERICA, N.A., as Agent, Issuing Bank
and Lender

By: _____
Name:
Title:

[Signature Page to Amended and Restated ABL Credit Agreement]

_____, as Lender

By: _____

Name:

Title:

[Signature Page to Amended and Restated ABL Credit Agreement]

_____, as a Non-
Consenting Lender

By: _____
Name:
Title:

[Signature Page to Amended and Restated ABL Credit Agreement]

Schedule I
to
Credit Agreement
(as amended through March 14, 2023 pursuant to
Amendment No. 5 to Credit Agreement)

From Amendment No. 5 Effective Date to
February 26, 2024 (the "Maturity Date").

Lender	Revolving Credit Commitment	Ratable Share	Letter of Credit Commitment
Bank of America, N.A.	\$31,203,000	34.67%	\$90,000,000.00
JPMorgan Chase Bank, N.A.	\$19,197,000	20.67%	\$0.00
Siemens Financial Services, Inc.	\$18,603,000	21.33%	\$0.00
Webster Business Credit, a Division of Webster Bank, N.A.	\$11,997,000	13.33%	\$0.00
Credit Suisse AG, Cayman Islands Branch— Non-Extended Revolving Credit Commitment	\$9,000,000	10.00%	\$0.00
Total:	\$90,000,000.00	100.00%	\$90,000,000.00

From February 27, 2024 to
June 12, 2024 (the "Extended Maturity Date").

Lender	Revolving Credit Commitment	Ratable Share	Letter of Credit Commitment
Bank of America, N.A. Extended Revolving Credit Commitment	\$31,203,000	38.52%	\$81,000,000.00
JPMorgan Chase Bank, N.A. Extended Revolving Credit Commitment	\$19,197,000	23.70%	\$0.00
Siemens Financial Services, Inc. Extended Revolving Credit Commitment	\$18,603,000	22.97%	\$0.00
Webster Business Credit, a Division of Webster Bank, N.A. Extended Revolving Credit Commitment	\$11,997,000	14.81%	\$0.00
Total:	\$81,000,000.00	100.00%	\$81,000,000.00

AMENDMENT NO. 1 TO LETTER OF CREDIT FACILITY AGREEMENT

AMENDMENT NO. 1 TO LETTER OF CREDIT FACILITY AGREEMENT, dated as of March 14, 2023 (this "Amendment No. 1"), by and among Bank of America, N.A., a national banking association, in its capacity as administrative agent and collateral agent (in such capacity, together with its successors and assigns, "Agent") pursuant to the LC Credit Agreement (as defined below), each of the parties to the LC Credit Agreement as lenders (individually, each a "Lender" and collectively, "Lenders"), BANK OF AMERICA, N.A., as issuing bank (in such capacity, "Issuing Bank"), Eastman Kodak Company, a New Jersey corporation (the "Borrower" or "Company"), the subsidiaries of Borrower party thereto as Guarantors (individually, each a "Guarantor" and collectively, "Guarantors").

W I T N E S S E T H :

WHEREAS, Agent, Issuing Bank, Lenders and certain other parties have entered into a letter of credit facility pursuant to which Issuing Bank has issued, and may from time to time issue, letters of credit to Borrower as set forth in the Letter of Credit Facility Agreement, dated as of February 26, 2021, by and among Borrower, Guarantors, Lenders, Issuing Bank and Agent (as the same now exists and is amended and supplemented pursuant hereto and may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the "LC Credit Agreement") and the other Loan Documents;

WHEREAS, Borrower and Guarantors have requested that Agent, Issuing Bank and Lenders agree to certain amendments to the LC Credit Agreement, and Agent, Issuing Bank and Lenders are willing to agree to such amendments, subject to the terms and conditions contained herein; and

WHEREAS, by this Amendment No. 1, Agent, Issuing Bank, Lenders and the Loan Parties intend to evidence such amendments;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1. Additional Definitions. The Credit Agreement is hereby amended to include, in addition and not in limitation, the following definitions:

(a) "Amendment No. 1" means the Amendment No. 1 to Letter of Credit Facility Agreement, dated as of March 14, 2023, by and among Agent, Issuing Bank, Lenders and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(b) "Amendment No. 1 Effective Date" means the first date on which the conditions precedent set forth in Section 6 of Amendment No. 1 are satisfied as set forth in the notice from Agent to Borrower provided for in Section 6 of Amendment No. 1.

1.2. Amendments to Definition—Maturity Date. The definition of the term "Maturity Date" in the LC Credit Agreement is hereby deleted in its entirety and replaced with the following:

"Maturity Date" means the earliest of: (a) June 12, 2024, (b) the termination of the ABL Credit Facility (or any Permitted Refinancing thereof), (c) the date that is ninety-one (91) days prior to the final maturity date under the Term Loan Agreement (or any Permitted Refinancing thereof), (d) the date that is ninety-one (91) days prior to the final maturity under the Convertible Note Documents (or any Permitted Refinancing thereof), (e) the date that is ninety-one (91) days prior to the date required for the redemption of the Series B Preferred Stock, or (f) the date that is ninety-one (91) days prior to the date required for the redemption of the Series C Preferred Stock.

2. Amendment to Minimum Liquidity Covenant. Section 5.03(c) of the LC Credit Agreement is hereby amended to add a new sentence at the end thereof as follows:

Borrower shall have Minimum Liquidity of not less than \$50,000,000 as of the close of business on each Business Day, provided, that, in the event that at any such time Minimum Liquidity shall be less than \$50,000,000, it shall not be an Event of Default so long as: (i) the amount of the Minimum Liquidity is not less than \$40,000,000, (ii) Borrower shall deposit or receive cash and Cash Equivalents in an amount not less than the amount required so that Minimum Liquidity shall be equal to or greater than \$50,000,000 no later than the close of business on the next Business Day after the date that Minimum Liquidity shall be less than \$50,000,000, and (iii) Minimum Liquidity shall not be less than \$50,000,000 as of the close of business on more than two (2) Business Days in any calendar month.

3. Representations and Warranties. Each Loan Party represents and warrants with and to Secured Parties as follows, which representations and warranties shall survive the execution and delivery hereof:

3.1. As of the Amendment No. 1 Effective Date, no Default or Event of Default exists or has occurred and is continuing.

3.2. This Amendment No. 1 has been duly authorized, executed and delivered by all necessary corporate or limited liability company action, as applicable, on the part of each Loan Party and, upon the notification by Agent to Borrower and Lenders of the Amendment No. 1 Effective Date, is in full force and effect as of the date hereof, as the case may be, and the agreements and obligations of each Loan Party, as the case may be, contained herein constitute legal, valid and binding obligations of each Loan Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

3.3. All of the representations and warranties of each Loan Party set forth herein and in each of the other Loan Documents are true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) on and as of the Amendment No. 1 Effective Date before and after giving effect to the effectiveness of this Amendment No. 1 and the transactions contemplated hereby with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date in which case such representations and warranties shall be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date.

4. Amendment Fees. Borrower shall pay to Agent, for the account of the Lenders which execute this Amendment No. 1, the fees provided for in the Amendment No. 1 Fee Letter, dated of even date herewith, between Agent and Borrower (the "Amendment No. 1 Fee Letter"), which fees shall be fully earned and payable on the Amendment No. 1 Effective Date and shall be nonrefundable in all circumstances.

5. Reaffirmation. Each Loan Party acknowledges, confirms and agrees that (a) it is indebted to Agent and Lenders under the LC Credit Agreement, including principal and all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally owing by Loan Parties, without offset, defense or counterclaim of any kind, nature or description whatsoever, (b) Agent has had and shall on and after the date hereof continue to have, for itself and the benefit of the other Secured Parties, a security interest in and lien upon the Collateral heretofore granted to Agent (or its predecessors in whatever capacity) pursuant to the Loan Documents to secure the Obligations, (c) the liens and security interests of Agent in the Collateral shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such liens and security interests to Agent, and (d) the LC Credit Agreement and each of the other Loan Documents remain in full force and effect and are hereby ratified and confirmed.

6. Conditions Precedent. The effectiveness of this Amendment No. 1 shall be subject to the satisfaction of each of the following conditions:

6.1. Agent shall have received executed counterparts (originals or electronic copies) of this Amendment No. 1, duly authorized, executed and delivered by Agent, each of the Lenders and the Loan Parties;

6.2. Agent shall have received, each in form and substance reasonably satisfactory to Agent, (a) customary legal opinions, (b) customary evidence of authority from each Loan Party, (c) customary officer's certificates from each Loan Party, (d) good standing certificates (to the extent applicable) in the respective jurisdictions of organization of each Loan Party, and (e) lien searches with respect to each Loan Party. Agent, for the benefit of itself, Lenders, Issuing Bank and bank product providers, shall hold perfected, security interests in and liens upon the Collateral in the order of priority set forth in the Term Loan Intercreditor Agreement, and Agent shall have received such evidence of the foregoing as it reasonably requires;

6.3. Agent shall have received evidence that (a) Borrower and Guarantors have entered into Amendment No. 5 to Amended and Restated Credit Agreement, with respect to the ABL Credit Facility Agreement, which shall be on terms and conditions reasonably satisfactory to Agent and Lenders, and (b) each of the conditions to the effectiveness thereof have been satisfied;

6.4. Agent shall have received executed counterparts (originals or electronic copies) of the Amendment No. 1 Fee Letter, duly authorized, executed and delivered by Agent and Borrower, and the payment of all fees required to be paid on the Amendment No. 1 Effective Date under the terms thereof or otherwise under the other Loan Documents;

6.5. after giving effect to this Amendment No. 1, no Default or Event of Default shall exist or have occurred and be continuing;

6.6. no material adverse change in the business, operations, profits, assets or prospects of Loan Parties shall have occurred since September 30, 2022; and

6.7. Agent and Lenders shall have received payment of all reasonable and documented out-of-pocket costs and expenses (including, without limitation, the reasonable and documented fees and expenses of counsel for Agent).

Agent shall notify Borrower and Lenders of the Amendment No. 1 Effective Date and such notice shall be conclusive and binding.

7. Effect of Amendment No. 1. Except as expressly set forth herein, no other amendments, changes or modifications to the Loan Documents are intended or implied, and in all other respects the Loan Documents are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and the Loan Parties shall not be entitled to any other or further amendment by virtue of the provisions of this Amendment No. 1 or with respect to the subject matter of this Amendment No. 1. Nothing in this Amendment No. 1 shall be deemed to be a novation of any of the Obligations as defined in the LC Credit Agreement or in any way impair or otherwise affect the rights or obligations of the parties thereunder. The amendments provided for herein shall not, in any manner, be construed to impair, limit, cancel or extinguish, or constitute a novation in respect of, the Indebtedness and other obligations and liabilities of any Loan Party evidenced by or arising under the LC Credit Agreement or the other Loan Documents. To the extent of conflict between the terms of this Amendment No. 1 and the other Loan Documents, the terms of this Amendment No. 1 shall control. The LC Credit Agreement and this Amendment No. 1 shall be read and construed as one agreement. This Amendment No. 1 is a Loan Document.

8. Jurisdiction. The provisions of Section 9.13 of the LC Credit Agreement shall apply with like effect to this Amendment No. 1.

9. Binding Effect. This Amendment No. 1 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

10. Waiver, Modification, Etc. No provision or term of this Amendment No. 1 may be modified, altered, waived, discharged or terminated orally or by course of conduct, but only by an instrument in writing executed by the party against whom such modification, alteration, waiver, discharge or termination is sought to be enforced.

11. Further Assurances. The Loan Parties shall execute and deliver such additional documents and take such additional action as may be reasonably requested by Agent to effectuate the provisions and purposes of this Amendment No. 1.

12. Entire Agreement. This Amendment No. 1 represents the entire agreement and understanding concerning the subject matter hereof among the parties hereto, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written.

13. Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 1.

14. Counterparts. This Amendment No. 1 may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement and may be executed by means of (i) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Any party delivering an executed counterpart of this Amendment No. 1 by electronic method of transmission shall also deliver an original executed counterpart of this Amendment No. 1, but the failure to do so shall not affect the validity, enforceability, and binding effect of this Amendment No. 1.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed and delivered by their authorized officers as of the day and year first above written.

EASTMAN KODAK COMPANY

By: /s/ Matthew C. Ebersold
Name: Matthew C. Ebersold
Title: Treasurer

EASTMAN KODAK INTERNATIONAL CAPITAL
COMPANY INC.
FAR EAST DEVELOPMENT LTD.
KODAK (NEAR EAST), INC.
KODAK AMERICAS, LTD.

By: /s/ Matthew C. Ebersold
Name: Matthew C. Ebersold
Title: Treasurer

KODAK PHILIPPINES, LTD.

By: /s/ Matthew C. Ebersold
Name: Matthew C. Ebersold
Title: Treasurer

BANK OF AMERICA, N.A.,
as Agent, Issuing Bank and Lender

By: /s/ Matthew T. O'Keefe
Name: Matthew T. O'Keefe
Title: Senior Vice President

SIEMENS FINANCIAL SERVICES, INC.,
as a Lender

By: /s/ Jeffrey B. Iervese
Name: Jeffrey B. Iervese
Title: Vice President

By: /s/ Richard Holston
Name: Richard Holston
Title: Vice President

WEBSTER BUSINESS CREDIT, a Division of
Webster
Bank, N.A., successor by merger to Webster
Business
Credit Corporation, as a Lender

By: /s/ George Kwong
Name: George Kwong
Title: Managing Director

Eastman Kodak Company and Subsidiary Companies

Subsidiaries of the Registrant as of December 31, 2022 are listed below:

1680382 Ontario Limited	Ontario, Canada
Eastman Kodak Holdings B.V.	Netherlands
Da Hai (Shanghai) Trading Co Ltd	China
Eastman Kodak International Capital Company, Inc.	Delaware
Eastman Kodak Sarl	Switzerland
Far East Development Ltd	Delaware
FPC Inc.	California
Kodak	France
Kodak (Australasia) Pty. Ltd.	Australia
Kodak (China) Company Limited	China
Kodak (China) Investment Company Limited	China
Kodak (China) Limited	Hong Kong
Kodak (Malaysia) Sdn. Bhd.	Malaysia
Kodak (Near East), Inc.	New York
Kodak (Shanghai) International Trading Co. Ltd.	China
Kodak (Singapore) Pte. Limited	Singapore
Kodak (Thailand) Limited	Thailand
Kodak (Xiamen) Digital Imaging Products Company	China
Kodak A/S	Denmark
Kodak Americas, Ltd.	New York
Kodak Argentina S.A.I.C.	Argentina
Kodak Brasileira Comércio de Produtos para Imagem e Serviços Ltda.	Brazil
Kodak Canada ULC	British Columbia, Canada
Kodak Chilena S.A.F.	Chile
Kodak de Colombia, SAS	Colombia
Kodak Electronic Products (Shanghai) Company Limited	China
Kodak Film Lab Atlanta, Inc.	Delaware
Kodak GmbH	Austria
Kodak GmbH	Germany
Kodak Graphic Communications EAD	Germany
Kodak Graphic Communications GmbH	Germany
Kodak Graphic Communications Limited	United Kingdom
Kodak Holding GmbH	Germany
Kodak IL Ltd.	Israel
Kodak India Private Limited	India
Kodak International Finance Limited	United Kingdom
Kodak Japan Ltd.	Japan
Kodak Korea Limited	South Korea
Kodak LB Tech, LLC	Delaware
Kodak Light Blocking New Materials LLC	Delaware
Kodak Limited	United Kingdom
Kodak Mexicana S.A.de C.V.	Mexico
Kodak Nederland B.V.	Netherlands
Kodak New Zealand Limited	New Zealand
Kodak Nordic AB	Sweden
Kodak OOO	Russia
Kodak Oy	Finland
Kodak PE Tech, LLC	Delaware
Kodak Philippines, Ltd.	New York
Kodak Polska Sp.zo.o	Poland
Kodak Polychrome Graphics Company Ltd.	Barbados
Kodak Polychrome Graphics Cono Sur SA	Uruguay
Kodak Polychrome Graphics Export SAFI	Uruguay
Kodak Realty, Inc.	New York
Kodak SA/NV	Belgium
Kodak Societa per Azioni	Italy
Kodak Societe Anonyme	Switzerland
Kodak Unterstutzungsgesellschaft GmbH	Germany
Kodak, Sociedad Anonima	Spain
KP Services (Jersey) Limited	Jersey, Channel Islands
KPG Finance (Barbados) SRL	Barbados
KPSH P Co1 Limited	Jersey, Channel Islands
KPSH P Co2 Limited	Jersey, Channel Islands
Laboratories Kodak S.A.S.	France
Laser-Pacific Media Corporation	Delaware
NPEC Inc.	California

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-190957) pertaining to the registration of 4,792,480 shares of common stock under the Eastman Kodak Company 2013 Omnibus Incentive Plan,
- (2) Registration Statement (Form S-8 No. 333-225437) pertaining to the registration of 1,000,000 shares of common stock under the Eastman Kodak Company 2013 Omnibus Incentive Plan, as amended,
- (3) Registration Statement (Form S-8 No. 333-250827) pertaining to the registration of 7,500,000 shares of common stock related under the Eastman Kodak Company 2013 Omnibus Incentive Plan, as amended and restated,
- (4) Registration Statement (Form S-3 No. 333-254352) pertaining to the registration of 44,490,032 shares of common stock of Eastman Kodak Company,
- (5) Registration Statement (Form S-3 No. 333-254353) pertaining to the registration of common stock, preferred stock, debt securities, warrants, depository shares, purchase contracts, guarantees and units of Eastman Kodak Company, and
- (6) Registration Statement (Form S-8 No. 333-258682) pertaining to the registration of 5,000,000 shares of common stock under the Eastman Kodak Company 2013 Omnibus Incentive Plan, as amended and restated;

of our reports dated March 16, 2023, with respect to the consolidated financial statements and schedule of Eastman Kodak Company and the effectiveness of internal control over financial reporting of Eastman Kodak Company included in this Annual Report (Form 10-K) of Eastman Kodak Company for the year ended December 31, 2022.

/s/ Ernst & Young LLP
Rochester, New York
March 16, 2023

CERTIFICATION

I, James V. Continenza, certify that:

- 1) I have reviewed this Form 10-K of Eastman Kodak Company;
- 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: March 16, 2023

By: /s/ James V. Continenza
James V. Continenza
Executive Chairman and Chief Executive Officer

CERTIFICATION

I, David E. Bullwinkle, certify that:

- 1) I have reviewed this Form 10-K of Eastman Kodak Company;
- 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: March 16, 2023

By: /s/ David E. Bullwinkle
David E. Bullwinkle
Chief Executive Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. Section 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Eastman Kodak Company (the "Company") on Form 10-K for the period ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James V. Continenza, Executive Chairman and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- 1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 16, 2023

By: /s/ James V. Continenza
James V. Continenza
Executive Chairman and Chief Executive Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. Section 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Eastman Kodak Company (the "Company") on Form 10-K for the period ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David E. Bullwinkle, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- 1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 16, 2023

By: /s/ David E. Bullwinkle
David E. Bullwinkle
Chief Financial Officer