

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

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2021
or

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

For the transition period from _____ to _____
Commission file number 001-36509

AMPHASTAR PHARMACEUTICALS, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

33-0702205
(I.R.S. Employer
Identification No.)

11570 6th Street
Rancho Cucamonga, CA
(Address of principal executive offices)

91730
(zip code)

(909) 980-9484
(Registrant's telephone number, including area code)

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See 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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

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 \$0.0001 per share	AMPH	The NASDAQ Stock Market LLC

The number of shares outstanding of the registrant's only class of common stock as of November 2, 2021 was 47,849,145.

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SPECIAL NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, or Quarterly Report, contains “forward-looking statements” that involve substantial risks and uncertainties. In some cases, you can identify forward-looking statements by the following words: “may,” “might,” “will,” “could,” “would,” “should,” “expect,” “intend,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “project,” “potential,” “continue,” “ongoing” or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these identifying words. Forward-looking statements relate to future events or future financial performance or condition and involve known and unknown risks, uncertainties and other factors that could cause actual results, levels of activity, performance or achievement to differ materially from those expressed or implied by the forward-looking statements. These forward-looking statements include, but are not limited to, statements about:

- our expectations regarding the sales and marketing of our products;
- our expectations regarding our manufacturing and production and the integrity of our supply chain for our products, including the risks associated with our single source suppliers;
- the impact of the COVID-19 pandemic and related responses of business and governments to the pandemic on our operations and personnel, and on commercial activity and demand across our business operations and results of operations;
- interruptions to our manufacturing and production as a result of natural catastrophic events or other causes beyond our control such as power disruptions or widespread disease outbreaks, such as the COVID-19 pandemic;
- global, national and local economic and market conditions, specifically with respect to geopolitical uncertainty, and the COVID-19 pandemic;
- the timing and likelihood of U.S. Food and Drug Administration, or FDA, approvals and regulatory actions on our product candidates, manufacturing activities and product marketing activities;
- our ability to advance product candidates in our platforms into successful and completed clinical trials and our subsequent ability to successfully commercialize our product candidates;
- our ability to compete in the development and marketing of our products and product candidates;
- our expectations regarding the business expansion plans for our Chinese subsidiary, Amphastar Nanjing Pharmaceuticals, Inc., or ANP, including its restructuring;
- the potential for adverse application of environmental, health and safety and other laws and regulations on our operations;
- our expectations for market acceptance of our new products and proprietary drug delivery technologies, as well as those of our active pharmaceutical ingredient, or API, customers;
- the potential for our marketed products to be withdrawn due to patient adverse events or deaths, or if we fail to secure FDA approval for products subject to the Prescription Drug Wrap-Up program;
- our expectations in obtaining insurance coverage and adequate reimbursement for our products from third-party payers;
- the amount of price concessions or exclusion of suppliers adversely affecting our business;
- our ability to establish and maintain intellectual property protection for our products and our ability to successfully defend our intellectual property in cases of alleged infringement;
- the implementation of our business strategies, product development strategies and technology utilization;
- the potential for exposure to product liability claims;
- future acquisitions, divestitures or investments, including the anticipated benefits of such acquisitions, divestitures or investments;
- our ability to expand internationally;
- economic and industry trends and trend analysis;
- our ability to remain in compliance with laws and regulations that currently apply or become applicable to our business both in the United States and internationally;
- the impact of trade tariffs, export or import restrictions, or other trade barriers;
- the impact of Patient Protection and Affordable Care Act (as amended) and other legislative and regulatory healthcare reforms in the countries in which we operate including the potential for drug price controls;
- the impact of global and domestic tax reforms, including the Tax Cuts and Jobs Act of 2017, or the Tax Act, as amended by the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act;
- the timing for completion and the validation of the new construction at our ANP and Amphastar facilities;
- the timing and extent of share buybacks; and
- our financial performance expectations, including our expectations regarding our backlog, revenue, cost of revenue, gross profit or gross margin, operating expenses, including changes in research and development, sales and marketing and general and administrative expenses, and our ability to achieve and maintain future profitability.

You should read this Quarterly Report and the documents that we reference elsewhere in this Quarterly Report completely and with the understanding that our actual results may differ materially from what we expect as expressed or implied by our forward-looking statements. In light of the significant risks and uncertainties to which our forward-looking statements are subject, you should not place

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undue reliance on or regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified timeframe, or at all. In particular, the extent of COVID-19's impact on our business will depend on several factors, including the severity, duration and extent of the pandemic, all of which continue to evolve and remain uncertain at this time. We discuss many of these risks and uncertainties in greater detail in this Quarterly Report and in our Annual Report on Form 10-K for the year ended December 31, 2020, particularly in Item 1A. "Risk Factors." These forward-looking statements represent our estimates and assumptions only as of the date of this Quarterly Report regardless of the time of delivery of this Quarterly Report, and such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. Except as required by law, we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise after the date of this Quarterly Report.

Unless expressly indicated or the context requires otherwise, references in this Quarterly Report to "Amphastar," "the Company," "we," "our," and "us" refer to Amphastar Pharmaceuticals, Inc. and our subsidiaries.

PART I – FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	September 30, 2021 (unaudited)	December 31, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 106,610	\$ 92,642
Restricted cash	235	1,865
Short-term investments	8,021	12,977
Restricted short-term investments	2,200	2,200
Accounts receivable, net	78,090	66,005
Inventories	100,240	96,831
Income tax refunds and deposits	520	385
Prepaid expenses and other assets	7,755	6,777
Total current assets	<u>303,671</u>	<u>279,682</u>
Property, plant, and equipment, net	242,924	260,055
Finance lease right-of-use assets	428	612
Operating lease right-of-use assets	27,663	20,042
Equity method investment	4,193	—
Goodwill and intangible assets, net	39,192	40,615
Other assets	11,610	5,250
Deferred tax assets	21,996	24,980
Total assets	<u>\$ 651,677</u>	<u>\$ 631,236</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 88,911	\$ 95,504
Income taxes payable	3,960	1,077
Current portion of long-term debt	2,256	12,263
Current portion of operating lease liabilities	2,862	3,357
Total current liabilities	<u>97,989</u>	<u>112,201</u>
Long-term reserve for income tax liabilities	4,709	4,709
Long-term debt, net of current portion and unamortized debt issuance costs	75,552	34,186
Long-term operating lease liabilities, net of current portion	25,466	17,464
Deferred tax liabilities	2,901	741
Other long-term liabilities	14,884	13,212
Total liabilities	<u>221,501</u>	<u>182,513</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock: par value \$0.0001; 20,000,000 shares authorized; no shares issued and outstanding	—	—
Common stock: par value \$0.0001; 300,000,000 shares authorized; 56,051,662 and 47,982,690 shares issued and outstanding as of September 30, 2021 and 54,760,922 and 47,495,439 shares issued and outstanding as of December 31, 2020, respectively	6	5
Additional paid-in capital	412,917	410,061
Retained earnings	160,577	117,773
Accumulated other comprehensive loss	(6,277)	(3,721)
Treasury stock	(137,047)	(121,812)
Total Amphastar Pharmaceuticals, Inc. stockholders' equity	<u>430,176</u>	<u>402,306</u>
Non-controlling interests	—	46,417
Total equity	<u>430,176</u>	<u>448,723</u>
Total liabilities and stockholders' equity	<u>\$ 651,677</u>	<u>\$ 631,236</u>

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited; in thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net revenues	\$ 112,198	\$ 83,431	\$ 316,881	\$ 253,925
Cost of revenues	61,015	46,923	173,376	147,417
Gross profit	51,183	36,508	143,505	106,508
Operating expenses:				
Selling, distribution, and marketing	4,745	3,673	13,411	10,993
General and administrative	10,910	11,674	40,813	38,344
Research and development	10,759	17,644	43,646	49,096
Total operating expenses	26,414	32,991	97,870	98,433
Income from operations	24,769	3,517	45,635	8,075
Non-operating income:				
Interest income	141	161	444	512
Interest expense	(527)	(175)	(717)	(286)
Other income, net	13,263	3,575	11,615	3,078
Total non-operating income, net	12,877	3,561	11,342	3,304
Income before income taxes	37,646	7,078	56,977	11,379
Income tax provision	6,686	2,285	13,436	4,490
Net income	\$ 30,960	\$ 4,793	\$ 43,541	\$ 6,889
Net income (loss) attributable to non-controlling interests	\$ 1,412	\$ 874	\$ 1,185	\$ (787)
Net income attributable to Amphastar Pharmaceuticals, Inc.	\$ 29,548	\$ 3,919	\$ 42,356	\$ 7,676
Net income per share attributable to Amphastar Pharmaceuticals, Inc. stockholders:				
Basic	\$ 0.62	\$ 0.08	\$ 0.89	\$ 0.16
Diluted	\$ 0.59	\$ 0.08	\$ 0.85	\$ 0.16
Weighted-average shares used to compute net income per share attributable to Amphastar Pharmaceuticals, Inc. stockholders:				
Basic	48,022	47,496	47,758	46,886
Diluted	50,009	49,848	49,693	48,922

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited; in thousands)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2021	2020	2021	2020
Net income attributable to Amphastar Pharmaceuticals, Inc.	\$ 29,548	\$ 3,919	\$ 42,356	\$ 7,676
Other comprehensive income (loss) attributable to Amphastar Pharmaceuticals, Inc., net of income taxes				
Reclassification of adjustment for amounts included in net income	(362)	—	(362)	—
Foreign currency translation adjustment	(984)	695	(2,194)	209
Total other comprehensive income (loss) attributable to Amphastar Pharmaceuticals, Inc.	(1,346)	695	(2,556)	209
Total comprehensive income attributable to Amphastar Pharmaceuticals, Inc.	<u>\$ 28,202</u>	<u>\$ 4,614</u>	<u>\$ 39,800</u>	<u>\$ 7,885</u>

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited; in thousands, except share data)

	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive loss	Treasury Stock		Total Amphastar Stockholders' Equity	Non- controlling Interest	Total
	Shares	Amount				Shares	Amount			
Balance as of December 31, 2020	54,760,922	\$ 5	\$ 410,061	\$ 117,773	\$ (3,721)	(7,265,483)	\$ (121,812)	\$ 402,306	\$ 46,417	\$ 448,723
Net income attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	5,041	—	—	—	5,041	—	5,041
Other comprehensive loss attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	—	(1,921)	—	—	(1,921)	—	(1,921)
Net loss attributable to non-controlling interest	—	—	—	—	—	—	—	—	(1,082)	(1,082)
Purchase of treasury stock	—	—	—	—	—	(204,698)	(3,783)	(3,783)	—	(3,783)
Issuance of treasury stock in connection with the Company's equity plans	—	—	(49)	—	—	4,184	49	—	—	—
Issuance of common stock in connection with the Company's equity plans	423,078	1	(853)	—	—	—	—	(852)	—	(852)
Share-based compensation expense	—	—	4,767	—	—	—	—	4,767	67	4,834
Balance as of March 31, 2021	55,184,000	\$ 6	\$ 413,926	\$ 122,814	\$ (5,642)	(7,465,997)	\$ (125,546)	\$ 405,558	\$ 45,402	\$ 450,960
Net income attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	7,767	—	—	—	7,767	—	7,767
Other comprehensive income attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	—	711	—	—	711	—	711
Net income attributable to non-controlling interest	—	—	—	—	—	—	—	—	855	855
Purchase of treasury stock	—	—	—	—	—	(298,727)	(5,560)	(5,560)	—	(5,560)
Issuance of treasury stock in connection with the Company's equity plans	—	—	(142)	—	—	12,064	142	—	—	—
Issuance of common stock in connection with the Company's equity plans	552,209	—	7,247	—	—	—	—	7,247	—	7,247
Share-based compensation expense	—	—	6,270	—	—	—	—	6,270	(1,027)	5,243
Balance as of June 30, 2021	55,736,209	\$ 6	\$ 427,301	\$ 130,581	\$ (4,931)	(7,752,660)	\$ (130,964)	\$ 421,993	\$ 45,230	\$ 467,223
Net income attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	29,548	—	—	—	29,548	—	29,548
Other comprehensive loss attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	—	(984)	—	—	(984)	—	(984)
ANP restructuring (see Note 3)	—	—	(22,162)	448	(362)	—	—	(22,076)	(46,642)	(68,718)
Net income attributable to non-controlling interest	—	—	—	—	—	—	—	—	1,412	1,412
Purchase of treasury stock	—	—	—	—	—	(317,212)	(6,094)	(6,094)	—	(6,094)
Issuance of treasury stock in connection with the Company's equity plans	—	—	(11)	—	—	900	11	—	—	—
Issuance of common stock in connection with the Company's equity plans	315,413	—	3,869	—	—	—	—	3,869	—	3,869
Share-based compensation expense	—	—	3,920	—	—	—	—	3,920	—	3,920
Balance as of September 30, 2021	56,051,622	\$ 6	\$ 412,917	\$ 160,577	\$ (6,277)	(8,068,972)	\$ (137,047)	\$ 430,176	\$ —	\$ 430,176

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited; in thousands, except share data)

	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive loss	Treasury Stock		Total Amphastar Stockholders' Equity	Non- controlling Interest	Total
	Shares	Amount				Shares	Amount			
Balance as of December 31, 2019	52,495,483	\$ 5	\$ 367,305	\$ 116,370	\$ (4,687)	(5,918,515)	\$ (97,627)	\$ 381,366	\$ 46,162	\$ 427,528
Net income attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	3,949	—	—	—	3,949	—	3,949
Other comprehensive loss attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	—	(774)	—	—	(774)	—	(774)
Net loss attributable to non-controlling interest	—	—	—	—	—	—	—	—	(424)	(424)
Purchase of treasury stock	—	—	—	—	—	(647,246)	(10,950)	(10,950)	—	(10,950)
Issuance of treasury stock in connection with the Company's equity plans	—	—	(84)	—	—	6,873	84	—	—	—
Issuance of common stock in connection with the Company's equity plans	369,508	—	(1,238)	—	—	—	—	(1,238)	—	(1,238)
Share-based compensation expense	—	—	5,161	—	—	—	—	5,161	121	5,282
Balance as of March 31, 2020	52,864,991	\$ 5	\$ 371,144	\$ 120,319	\$ (5,461)	(6,558,888)	\$ (108,493)	\$ 377,514	\$ 45,859	\$ 423,373
Net loss attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	(192)	—	—	—	(192)	—	(192)
Other comprehensive income attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	—	288	—	—	288	—	288
Net loss attributable to non-controlling interest	—	—	—	—	—	—	—	—	(1,237)	(1,237)
Purchase of treasury stock	—	—	—	—	—	(329,391)	(5,756)	(5,756)	—	(5,756)
Issuance of treasury stock in connection with the Company's equity plans	—	—	(130)	—	—	10,913	130	—	—	—
Issuance of common stock in connection with the Company's equity plans	1,507,284	—	19,448	—	—	—	—	19,448	—	19,448
Share-based compensation expense	—	—	6,379	—	—	—	—	6,379	134	6,513
Balance as of June 30, 2020	54,372,275	\$ 5	\$ 396,841	\$ 120,127	\$ (5,173)	(6,877,366)	\$ (114,119)	\$ 397,681	\$ 44,756	\$ 442,437
Net income attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	3,919	—	—	—	3,919	—	3,919
Other comprehensive income attributable to Amphastar Pharmaceuticals, Inc.	—	—	—	—	695	—	—	695	—	695
Acquisition of additional ownership interest in ANP	—	—	—	—	—	—	—	—	(106)	(106)
Net income attributable to non-controlling interest	—	—	—	—	—	—	—	—	874	874
Purchase of treasury stock	—	—	—	—	—	(214,256)	(4,329)	(4,329)	—	(4,329)
Issuance of treasury stock in connection with the Company's equity plans	—	—	(23)	—	—	2,000	23	—	—	—
Issuance of common stock in connection with the Company's equity plans	251,562	—	3,102	—	—	—	—	3,102	—	3,102
Share-based compensation expense	—	—	4,164	—	—	—	—	4,164	206	4,370
Balance as of September 30, 2020	54,623,837	\$ 5	\$ 404,084	\$ 124,046	\$ (4,478)	(7,089,622)	\$ (118,425)	\$ 405,232	\$ 45,730	\$ 450,962

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited; in thousands)

	Nine Months Ended September 30,	
	2021	2020
Cash Flows From Operating Activities:		
Net income	\$ 43,541	\$ 6,889
Reconciliation to net cash provided by operating activities:		
Loss on disposal of assets	338	161
Gain on deconsolidation of subsidiary	(13,587)	—
Depreciation of property, plant, and equipment	16,800	14,946
Amortization of product rights, trademarks, and patents	930	771
Operating lease right-of-use asset amortization	2,471	2,693
Share-based compensation expense	14,837	16,165
Changes in deferred taxes, net	5,170	3,638
Changes in operating assets and liabilities:		
Accounts receivable, net	(14,166)	(6,706)
Inventories	(5,768)	2,351
Prepaid expenses and other assets	2,463	(3,755)
Income tax refunds, deposits, and payable, net	2,832	(1,973)
Operating lease liabilities	(2,529)	(2,478)
Accounts payable and accrued liabilities	4,221	7,671
Net cash provided by operating activities	<u>57,553</u>	<u>40,373</u>
Cash Flows From Investing Activities:		
Purchases and construction of property, plant, and equipment	(20,578)	(24,526)
Purchase of short-term investments	(12,459)	(10,930)
Maturity of short-term investments	17,423	11,891
Payment of deposits and other assets	(1,104)	(674)
Net cash used in investing activities	<u>(16,718)</u>	<u>(24,239)</u>
Cash Flows From Financing Activities:		
Acquisition of additional ownership interest in ANP	—	(106)
ANP restructuring (see Note 3)	(53,592)	—
Proceeds from equity plans, net of withholding tax payments	10,264	21,312
Purchase of treasury stock	(15,437)	(21,035)
Settlement of ANP equity awards	(839)	—
Debt issuance costs	(1,430)	—
Proceeds from borrowing under lines of credit	—	1,072
Repayments under lines of credit	(1,161)	—
Proceeds from issuance of long-term debt	70,000	3,067
Principal payments on long-term debt	(36,127)	(6,329)
Net cash used in financing activities	<u>(28,322)</u>	<u>(2,019)</u>
Effect of exchange rate changes on cash	(175)	110
Net increase in cash, cash equivalents, and restricted cash	12,338	14,225
Cash, cash equivalents, and restricted cash at beginning of period	94,507	75,550
Cash, cash equivalents, and restricted cash at end of period	<u>\$ 106,845</u>	<u>\$ 89,775</u>
Noncash Investing and Financing Activities:		
Capital expenditure included in accounts payable	\$ 6,246	\$ 6,477
Operating lease right-of-use assets	\$ 11,015	\$ 4,119
Equipment acquired under finance leases	\$ 107	\$ 61
Supplemental Disclosures of Cash Flow Information:		
Interest paid, net of capitalized interest	\$ 1,868	\$ 1,678
Income taxes paid	\$ 5,480	\$ 2,807

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1. General

Amphastar Pharmaceuticals, Inc., a Delaware corporation (together with its subsidiaries, hereinafter referred to as the “Company”) is a bio-pharmaceutical company that develops, manufactures, markets, and sells generic and proprietary injectable, inhalation, and intranasal products, including products with high technical barriers to market entry. Additionally, the Company sells insulin active pharmaceutical ingredient, or API, products. Most of the Company’s products are used in hospital or urgent care clinical settings and are primarily contracted and distributed through group purchasing organizations and drug wholesalers. The Company’s insulin API products are sold to other pharmaceutical companies for use in their own products and are being used by the Company in the development of injectable finished pharmaceutical products. The Company’s inhalation product, Primatene Mist[®], is primarily distributed through drug retailers.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements of the Company for the year ended December 31, 2020 and the notes thereto as filed with the Securities and Exchange Commission, or SEC, in the Company’s Annual Report on Form 10-K for the year ended December 31, 2020. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with generally accepted accounting principles, or GAAP, have been condensed or omitted from the accompanying condensed consolidated financial statements. The accompanying year-end condensed consolidated balance sheet was derived from the audited financial statements. The accompanying interim financial statements are unaudited, but reflect all adjustments which are, in the opinion of management, necessary for a fair statement of the Company’s consolidated financial position, results of operations, comprehensive income (loss), stockholders’ equity, and cash flows for the periods presented. Unless otherwise noted, all such adjustments are of a normal, recurring nature. The Company’s results of operations, comprehensive income (loss) and cash flows for the interim periods are not necessarily indicative of the results of operations and cash flows that it may achieve in future periods.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation

The unaudited condensed consolidated financial statements include the accounts of the Company and its subsidiaries, and are prepared in accordance with United States generally accepted accounting principles, or GAAP. Certain prior period amounts have been reclassified within the investing activities of the statement of cash flows to conform to the current period presentation. All intercompany activity has been eliminated in the preparation of the condensed consolidated financial statements. In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all adjustments, which are of a normal recurring nature, necessary to present fairly the consolidated financial position, results of operations, and cash flows of the Company.

The Company’s subsidiaries include: (1) International Medication Systems, Limited, or IMS, (2) Armstrong Pharmaceuticals, Inc., or Armstrong, (3) Amphastar Nanjing Pharmaceuticals Inc., or ANP, (4) Amphastar France Pharmaceuticals, S.A.S., or AFP, (5) Amphastar UK Ltd., or AUK, and (6) International Medication Systems (UK) Limited, or IMS UK.

COVID-19 Pandemic

The Company is subject to risks and uncertainties as a result of the ongoing novel coronavirus pandemic, or COVID-19. The complete extent of the impact of the COVID-19 pandemic on the Company’s business is highly uncertain and difficult to predict, as the information is constantly evolving. The Company considered the impact of COVID-19 on the assumptions and estimates used to determine the results reported and asset valuations as of September 30, 2021.

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All of the Company's production facilities continued to operate during the quarter as they had prior to the COVID-19 pandemic with very little change, other than for enhanced safety measures intended to prevent the spread of the virus.

It is not possible at this time to estimate the complete impact that COVID-19 could have on the Company's business, including its customers and suppliers, as the impact will depend on future developments, which are highly uncertain and cannot be predicted. The Company will continue to monitor the impact of COVID-19 on all aspects of its business.

Investments in Unconsolidated Affiliates

The Company applies the equity method of accounting for investments when it has significant influence, but not controlling interest in the investee. Judgment regarding the level of influence over each equity method investment includes key factors such as ownership interest, representation on the board of directors, participation in policy-making decisions and material intercompany transactions. The Company's proportionate share of the earnings or losses resulting from these investments is reported as "Equity in earnings of unconsolidated affiliates" in the consolidated statements of operations. Investments accounted for using the equity method may be reported on a lag of up to three months if financial statements of the investee are not available in sufficient time for the investor to apply the equity method as of the current reporting date. The determination of whether an investee's results are recorded on a lag is made on an investment-by-investment basis.

The carrying value of equity method investments is reported as "Equity method investments" in the consolidated balance sheets. The Company's equity method investments are reported at cost and adjusted each period for the Company's share of the investee's earnings or losses and dividends paid, if any.

The Company assesses investments for impairment whenever events or changes in circumstances indicate that the carrying value of an investment may not be recoverable. If the decline in value is considered to be other than temporary, the investment is written down to its estimated fair value, which establishes a new cost basis in the investment. The Company did not record any such impairment charges for all periods presented.

Use of Estimates

The preparation of condensed consolidated financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. Actual results could differ from those estimates. The principal accounting estimates include: determination of allowances for credit losses, fair value of financial instruments, allowance for discounts, provision for chargebacks and rebates, provision for product returns, adjustment of inventory to its net realizable values, impairment of long-lived and intangible assets and goodwill, workers' compensation liabilities, litigation reserves, stock price volatilities for share-based compensation expense, valuation allowances for deferred tax assets, and liabilities for uncertain income tax positions.

Foreign Currency

The functional currency of the Company, its domestic subsidiaries, its Chinese subsidiary, ANP, and its U.K. subsidiary, AUK, is the US Dollar. ANP maintains its books of record in Chinese yuan. These books are remeasured into the functional currency of USD using current or historical exchange rates. The resulting currency remeasurement adjustments and other transactional foreign currency exchange gains and losses are reflected in the Company's condensed consolidated statements of operations.

The Company's French subsidiary, AFP, maintains its book of record in euros. AUK's subsidiary, IMS UK, maintains its book of record in British pounds. These local currencies have been determined to be the subsidiaries' respective

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functional currencies. These books of record are translated into USD using average exchange rates during the period. Assets and liabilities are translated at the rate of exchange prevailing on the balance sheet date. Equity is translated at the prevailing rate of exchange at the date of the equity transactions. Translation adjustments are reflected in stockholders' equity and are included as a component of other accumulated comprehensive income (loss). The unrealized gains or losses of intercompany foreign currency transactions that are of a long-term investment nature are reported in other accumulated comprehensive income (loss).

The unrealized gains or losses on intercompany foreign currency transactions that are of a long-term investment nature were a \$0.9 million loss and a \$1.9 million loss for the three and nine months ended September 30, 2021, respectively. For the three and nine months ended September 30, 2020, the unrealized gains on intercompany foreign currency transactions that are of a long-term investment nature were a \$1.4 million.

Comprehensive Income (Loss)

For the three and nine months ended September 30, 2021 and 2020, the Company included its foreign currency translation gain or loss as part of its comprehensive income (loss). There was no material income tax expense (benefit) allocated to other comprehensive income (loss) for the three and nine months ended September 30, 2021. Income tax expense of \$0.4 million was allocated to other comprehensive income for both the three and nine months ended September 30, 2020.

Advertising Expense

Advertising expenses, primarily associated with Primatene Mist®, are recorded as they are incurred, except for expenses related to the development of a major commercial or media campaign, which are expensed in the period in which the commercial or campaign is first presented, and are reflected as a component of selling, distribution and marketing in the Company's condensed consolidated statement of operations. For the three and nine months ended September 30, 2021, advertising expenses were \$2.3 million and \$6.4 million, respectively. For the three and nine months ended September 30, 2020, advertising expenses were \$1.5 million and \$3.9 million, respectively.

Financial Instruments

The carrying amounts of cash and cash equivalents, short-term investments, restricted cash and short-term investments, accounts receivable, accounts payable, accrued expenses, and short-term borrowings approximate fair value due to the short maturity of these items. The majority of the Company's long-term obligations consist of variable rate debt, and their carrying value approximates fair value as the stated borrowing rates are comparable to rates currently offered to the Company for instruments with similar maturities. The Company at times enters into fixed interest rate swap contracts to exchange the variable interest rates for fixed interest rates without the exchange of the underlying notional debt amounts. Such interest rate swap contracts are recorded at their fair values.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash, money market accounts, certificates of deposit and highly liquid investments purchased with original maturities of three months or less.

Short-Term Investments

Short-term investments as of September 30, 2021 and December 31, 2020 consisted of certificates of deposit and investment grade debt securities with original expiration dates within 12 months.

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Restricted Cash

Restricted cash is collateral required for the Company to guarantee certain vendor payments in France. As of September 30, 2021 and December 31, 2020, the restricted cash balances were \$0.2 million and \$1.9 million, respectively.

Restricted Short-Term Investments

Restricted short-term investments consist of certificates of deposit that are collateral for standby letters of credit to qualify for workers' compensation self-insurance. The certificates of deposit have original maturities greater than three months but less than one year. As of September 30, 2021 and December 31, 2020, the balance of restricted short-term investments was \$2.2 million.

Deferred Income Taxes

The Company utilizes the liability method of accounting for income taxes, under which deferred taxes are determined based on the temporary differences between the financial statements and the tax basis of assets and liabilities using enacted tax rates. A valuation allowance is recorded when it is more likely than not that the deferred tax assets will not be realized.

Recent Accounting Pronouncements

There have been no recent accounting pronouncements or changes in accounting pronouncements during the three months ended September 30, 2021 that are of significance or potential significance to the Company as compared to the recent accounting pronouncements described in the Company's Annual Report on Form 10-K filed with the SEC on March 15, 2021.

Note 3. ANP Restructuring

In July 2018, the Company's Chinese subsidiary, ANP, completed a private placement of its common equity interest to accredited investors and received approximately \$56.3 million of cash proceeds. The Company retained approximately 58% of the equity interest in ANP following the private placement and continues to consolidate the financial results of ANP with the Company's results of operations.

In May 2021, the Company's Board of Directors approved a plan for the restructuring of the equity ownership of ANP, whereby the Company purchased an additional ownership interest in ANP from certain equity holders of ANP, or the Sellers, and split-off certain subsidiaries of ANP. Under the terms of the restructuring plan, the Company entered into a Share Purchase Agreement, or SPA, with certain of the Sellers to acquire an approximately 18% additional ownership interest in ANP for approximately \$29.4 million in cash. The Company also entered into a Share Repurchase Agreement, or SRA, with certain of the Sellers, whereby the Company contributed 80% of its ownership interest in Hanxin and Hanxin's existing subsidiaries, Baixin and Letop, to the Sellers in exchange for an approximately 10% additional ownership interest in ANP. Following completion of these transactions, the Company ownership increased to approximately 85% of the equity interest in ANP.

In August 2021, the Company entered into a second Share Purchase Agreement, or Second SPA, with the sole remaining equity holder of ANP to acquire the remaining approximately 15% of ownership interest in ANP. The total cash payment by the Company for this transaction was approximately \$22.5 million. Following completion of the transaction, the Company's ownership of ANP increased to 100%.

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Certain of the Sellers are the Company's executive officers, directors and other related parties. The Sellers who participated in the SPA included executives of the Company William J. Peters, Rong Zhou, and Jacob Liawatidewi; directors of the Company Howard Lee and Richard Koo; relatives of Dr. Jack Zhang and Dr. Mary Luo, Henry Zhang, Qingqing Chen, Chongqing Zhang, Lu Zhang, and James Luo, or entities related to such persons.

The Sellers who participated in the SRA included Dr. Mary Luo and Dr. Jack Zhang through an affiliated party, and their family members Henry Zhang, Qingqing Chen, Chongqing Zhang, Bill Zhang, and Lu Zhang. Sellers who participated in the Second SPA include Dr. Mary Luo, Dr. Jack Zhang, through an affiliated party, and their family members Chongqing Zhang and Bill Zhang.

The restructuring of ANP was completed in the third quarter of 2021. As a result of the restructuring activities, the Company's ownership interest in ANP was increased to 100%, and ANP's ownership interest in Hanxin and its subsidiaries was reduced to approximately 20%.

The reduction of the Company's ownership in Hanxin to 20%, resulted in ANP experiencing a "loss of control" of a subsidiary as defined by GAAP. Loss of control is deemed to have occurred when, among other things, a parent company owns less than a majority of the outstanding common stock in the subsidiary, lacks a controlling financial interest in the subsidiary and, is unable to unilaterally control the subsidiary through other means such as having, or being able to obtain, the power to elect a majority of the subsidiary's board of directors based solely on contractual rights or ownership of shares holding a majority of the voting power of the subsidiary's voting securities. These loss-of-control factors were met with respect to ANP's ownership interest in Hanxin after the restructuring.

Accordingly, on completion of the SRA in the third quarter, the Company deconsolidated Hanxin and recorded a \$13.6 million gain on deconsolidation, which is recognized in other income (expenses), net, in the consolidated statement of operations for the three and nine months ended September 30, 2021. Of the \$13.6 million gain recorded, approximately \$2.7 million related to the remeasurement of the retained noncontrolling investment in Hanxin. The remainder of the gain relates to the excess of the fair value the consideration received, over the book value of Hanxin's net assets.

Hanxin continues to be a related party after the deconsolidation.

In addition to the retained noncontrolling investment in Hanxin, the Company maintains a seat on Hanxin's board of directors, and Henry Zhang, a relative of Dr. Jack Zhang and Dr. Mary Luo, is an equity holder, general manager, and chairman of the board of directors of Hanxin. As a result, it was determined that the Company has significant influence over Hanxin and as such the retained noncontrolling investment in Hanxin is accounted for as an equity method investment.

As an equity method investment, the retained noncontrolling 20% investment in Hanxin was recorded at fair value in the amount of \$4.2 million, which exceeds the amount of underlying equity in Hanxin's net assets by \$2.7 million. This basis difference was deemed to be a premium in excess of fair value, which is referred to as equity method goodwill, and is recorded within the "Equity Method Investment" line on the Company's consolidated balance sheets. The fair value of the noncontrolling investment in Hanxin was determined using a discounted cash flow model using Level 3 inputs.

Subsequent to the restructuring, during the third quarter of 2021, Hanxin received additional capital contributions resulting in further reduction of ANP's ownership to approximately 14%.

During the second quarter of 2021, in connection with the restructuring, the Company terminated the 2018 ANP Equity Incentive Plan. (See note 16)

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Note 4. Revenue Recognition

In accordance with Accounting Standard Codification, or ASC, 606 *Revenue from Contracts with Customers*, revenue is recognized at the time that the Company's customers obtain control of the promised goods.

Generally, revenue is recognized at the time of product delivery to the Company's customers. In some cases, revenue is recognized at the time of shipment when stipulated by the terms of the sale agreements.

The consideration the Company receives in exchange for its goods or services is only recognized when it is probable that a significant reversal will not occur. The consideration to which the Company expects to be entitled includes a stated list price, less various forms of variable consideration. The Company makes significant estimates for related variable consideration at the point of sale, including chargebacks, rebates, product returns, other discounts and allowances.

The Company's payment terms vary by types and locations of customers and the products or services offered. Payment terms differ by jurisdiction and customers, but payment is generally required in a term ranging from 30 to 75 days from date of shipment or satisfaction of the performance obligation. For certain products or services and certain customer types, we may require payment before products are delivered or services are rendered to customers.

Provisions for estimated chargebacks, rebates, discounts, product returns and credit losses are made at the time of sale and are analyzed and adjusted, if necessary, at each balance sheet date.

Revenues derived from contract manufacturing services are recognized when third-party products are shipped to customers, and after the customer has accepted test samples of the products to be shipped.

The Company's accounting policy is to review each agreement involving contract development and manufacturing services to determine if there are multiple revenue-generating activities that constitute more than one unit of accounting. Revenues are recognized for each unit of accounting based on revenue recognition criteria relevant to that unit. The Company does not have any revenue arrangements with multiple performance obligations.

Provision for Chargebacks and Rebates

The provision for chargebacks and rebates is a significant estimate used in the recognition of revenue. Wholesaler chargebacks relate to sales terms under which the Company agrees to reimburse wholesalers for differences between the gross sales prices at which the Company sells its products to wholesalers and the actual prices of such products that wholesalers resell under the Company's various contractual arrangements with third parties such as hospitals and group purchasing organizations in the United States. Rebates include primarily amounts paid to retailers, payers, and providers in the United States, including those paid to state Medicaid programs, and are based on contractual arrangements or statutory requirements. The Company estimates chargebacks and rebates using the expected value method at the time of sale to wholesalers based on wholesaler inventory stocking levels, historic chargeback and rebate rates, and current contract pricing.

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The provision for chargebacks and rebates is reflected as a component of net revenues. The following table is an analysis of the chargeback and rebate provision:

	Nine Months Ended September 30,	
	2021	2020
	(in thousands)	
Beginning balance	\$ 20,380	\$ 21,644
Provision for chargebacks and rebates	151,174	110,763
Credits and payments issued to third parties	(154,143)	(113,576)
Ending balance	<u>\$ 17,411</u>	<u>\$ 18,831</u>

Changes in the chargeback provision from period to period are primarily dependent on the Company's sales to its wholesalers, the level of inventory held by wholesalers, and the wholesalers' customer mix. Changes in the rebate provision from period to period are primarily dependent on retailer's and other indirect customers' purchases. The approach that the Company uses to estimate chargebacks has been consistently applied for all periods presented. Variations in estimates have been historically small. The Company continually monitors the provision for chargebacks and rebates and makes adjustments when it believes that the actual chargebacks and rebates may differ from the estimates. The settlement of chargebacks and rebates generally occurs within 30 days to 60 days after the sale to wholesalers. Accounts receivable and/or accounts payable and accrued liabilities are reduced and/or increased by the chargebacks and rebate amounts depending on whether the Company has the right to offset with the customer. Of the provision for chargebacks and rebates as of September 30, 2021 and December 31, 2020, \$13.5 million and \$16.4 million were included in accounts receivable, net, on the condensed consolidated balance sheets, respectively. The remaining provision as of September 30, 2021 and December 31, 2020 of \$3.9 million and \$4.0 million, respectively, were included in accounts payable and accrued liabilities.

Accrual for Product Returns

The Company offers most customers the right to return qualified excess or expired inventory for partial credit; however, API product sales are generally non-returnable. The Company's product returns primarily consist of the returns of expired products from sales made in prior periods. Returned products cannot be resold. At the time product revenue is recognized, the Company records an accrual for product returns estimated using the expected value method. The accrual is based, in part, upon the historical relationship of product returns to sales and customer contract terms. The Company also assesses other factors that could affect product returns including market conditions, product obsolescence, and the introduction of new competition. Although these factors do not normally give the Company's customers the right to return products outside of the regular return policy, the Company realizes that such factors could ultimately lead to increased returns. The Company analyzes these situations on a case-by-case basis and makes adjustments to the product return reserve as appropriate.

The provision for product returns is reflected as a component of net revenues. The following table is an analysis of the product return liability:

	Nine Months Ended September 30,	
	2021	2020
	(in thousands)	
Beginning balance	\$ 14,204	\$ 10,339
Provision for product returns	11,714	9,084
Credits issued to third parties	(6,183)	(6,731)
Ending balance	<u>\$ 19,735</u>	<u>\$ 12,692</u>

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Of the provision for product returns as of September 30, 2021 and December 31, 2020, \$14.8 million and \$10.2 million, were included in accounts payable and accrued liabilities on the condensed consolidated balance sheets, respectively. The remaining provision as of September 30, 2021 and December 31, 2020, of \$4.9 million and \$4.0 million, were included in other long-term liabilities, respectively. For the nine months ended September 30, 2021 and 2020, the Company's aggregate product return rate was 1.7% and 1.3% of qualified sales, respectively.

Note 5. Income per Share Attributable to Amphastar Pharmaceuticals, Inc. Stockholders

Basic net income per share attributable to Amphastar Pharmaceuticals, Inc. stockholders is calculated based upon the weighted-average number of shares outstanding during the period. Diluted net income per share attributable to Amphastar Pharmaceuticals, Inc. stockholders gives effect to all potential dilutive shares outstanding during the period, such as stock options, non-vested restricted stock units and shares issuable under the Company's Employee Stock Purchase Plan, or ESPP.

For the three and nine months ended September 30, 2021, options to purchase 1,885,093 and 2,045,878 shares of stock, respectively, with a weighted-average exercise price of \$20.86 per share and \$20.74 per share, respectively, were excluded from the computation of diluted net income per share attributable to Amphastar Pharmaceuticals, Inc. stockholders because the effect would be anti-dilutive.

For the three and nine months ended September 30, 2020, options to purchase 1,271,347 and 1,928,629 shares of stock, respectively, with a weighted-average exercise price of \$21.35 per share and \$20.84 per share, respectively, and the reallocation of net income attributable to non-controlling interests were excluded in the computation of diluted net income per common share attributable to Amphastar Pharmaceuticals, Inc. stockholders because the effect would be anti-dilutive.

The following table provides the calculation of basic and diluted net income per share attributable to Amphastar Pharmaceuticals, Inc. stockholders for each of the periods presented:

	<u>Three Months Ended</u> <u>September 30,</u>		<u>Nine Months Ended</u> <u>September 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
	(in thousands, except per share data)			
Basic and dilutive numerator:				
Net income attributable to Amphastar Pharmaceuticals, Inc.	\$ 29,548	\$ 3,919	\$ 42,356	\$ 7,676
Denominator:				
Weighted-average shares outstanding — basic	48,022	47,496	47,758	46,886
Net effect of dilutive securities:				
Incremental shares from equity awards	1,987	2,352	1,935	2,036
Weighted-average shares outstanding — diluted	50,009	49,848	49,693	48,922
Net income per share attributable to Amphastar Pharmaceuticals, Inc. stockholders — basic	\$ 0.62	\$ 0.08	\$ 0.89	\$ 0.16
Net income per share attributable to Amphastar Pharmaceuticals, Inc. stockholders — diluted	\$ 0.59	\$ 0.08	\$ 0.85	\$ 0.16

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Note 6. Segment Reporting

The Company's business is the development, manufacture, and marketing of pharmaceutical products. The Company has identified two reporting segments that each report to the Chief Operating Decision Maker, or CODM, as defined in ASC 280, Segment Reporting. The Company's performance is assessed and resources are allocated by the CODM based on the following two reportable segments:

- Finished pharmaceutical products
- API

The finished pharmaceutical products segment manufactures, markets and distributes Primatene Mist[®], glucagon, enoxaparin, naloxone, phytonadione, lidocaine, epinephrine, as well as various other critical and non-critical care drugs. The API segment manufactures and distributes recombinant human insulin API and porcine insulin API for external customers and internal product development.

Selected financial information by reporting segment is presented below:

	<u>Three Months Ended</u> <u>September 30,</u>		<u>Nine Months Ended</u> <u>September 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
	(in thousands)			
Net revenues:				
Finished pharmaceutical products	\$ 108,990	\$ 81,335	\$ 301,594	\$ 243,568
API	3,208	2,096	15,287	10,357
Total net revenues	112,198	83,431	316,881	253,925
Gross profit (loss):				
Finished pharmaceutical products	54,602	39,546	149,502	113,793
API	(3,419)	(3,038)	(5,997)	(7,285)
Total gross profit	51,183	36,508	143,505	106,508
Operating expenses	26,414	32,991	97,870	98,433
Income from operations	24,769	3,517	45,635	8,075
Non-operating income	12,877	3,561	11,342	3,304
Income before income taxes	<u>\$ 37,646</u>	<u>\$ 7,078</u>	<u>\$ 56,977</u>	<u>\$ 11,379</u>

The Company manages its business segments to the gross profit level and manages its operating and other costs on a company-wide basis. The Company does not identify total assets by segment for internal purposes, as the Company's CODM does not assess performance, make strategic decisions, or allocate resources based on assets.

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The amount of net revenues in the finished pharmaceutical product segment is presented below:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2021	2020	2021	2020
	(in thousands)			
Finished pharmaceutical products net revenues:				
Primatene Mist®	\$ 16,561	\$ 12,988	\$ 51,624	\$ 38,333
Epinephrine	13,892	5,370	38,662	16,317
Lidocaine	11,649	10,657	32,314	28,922
Glucagon	12,189	—	32,304	—
Phytonadione	11,591	10,470	31,577	32,188
Enoxaparin	8,034	11,647	28,020	31,033
Naloxone	8,028	8,739	20,994	26,337
Other finished pharmaceutical products	27,046	21,464	66,099	70,438
Total finished pharmaceutical products net revenues	<u>\$ 108,990</u>	<u>\$ 81,335</u>	<u>\$ 301,594</u>	<u>\$ 243,568</u>

The amount of depreciation and amortization expense included in cost of revenues, by reporting segments, is presented below:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2021	2020	2021	2020
	(in thousands)			
Depreciation and amortization expense				
Finished pharmaceutical products	\$ 1,534	\$ 1,408	\$ 4,429	\$ 4,325
API	970	1,048	3,197	2,205
Total depreciation and amortization expense	<u>\$ 2,504</u>	<u>\$ 2,456</u>	<u>\$ 7,626</u>	<u>\$ 6,530</u>

Net revenues and carrying values of long-lived assets by geographic regions are as follows:

	Net Revenue				Long-Lived Assets	
	Three Months Ended		Nine Months Ended		September 30,	December 31,
	2021	2020	2021	2020	2021	2020
	(in thousands)					
United States	\$ 107,829	\$ 79,407	\$ 302,192	\$ 242,370	\$ 134,684	\$ 129,401
China	2,554	1,959	4,801	2,482	89,385	98,538
France	1,815	2,065	9,888	9,073	46,946	52,770
Total	<u>\$ 112,198</u>	<u>\$ 83,431</u>	<u>\$ 316,881</u>	<u>\$ 253,925</u>	<u>\$ 271,015</u>	<u>\$ 280,709</u>

Note 7. Customer and Supplier Concentration

Customer Concentrations

Three large wholesale drug distributors, AmerisourceBergen Corporation, or AmerisourceBergen, Cardinal Health, Inc., or Cardinal, and McKesson Corporation, or McKesson, are all distributors of the Company's products, as well as suppliers of a broad range of health care products. The Company considers these three customers to be its major customers, as each individually, and these customers collectively, represented a significant percentage of the Company's net revenue for the three and nine months ended September 30, 2021 and 2020, and accounts receivable as of September

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30, 2021 and December 31, 2020, respectively. The following table provides accounts receivable and net revenue information for these major customers:

	% of Total Accounts Receivable		% of Net Revenue			
	September 30,	December 31,	Three Months Ended		Nine Months Ended	
	2021	2020	September 30,	September 30,	September 30,	September 30,
	2021	2020	2021	2020	2021	2020
AmerisourceBergen	15 %	9 %	25 %	23 %	24 %	23 %
McKesson	23 %	24 %	21 %	21 %	20 %	22 %
Cardinal Health	20 %	17 %	18 %	17 %	16 %	18 %

Supplier Concentrations

The Company depends on suppliers for raw materials, APIs, and other components that are subject to stringent FDA requirements. Some of these materials may only be available from one or a limited number of sources. Establishing additional or replacement suppliers for these materials may take a substantial period of time, as suppliers must be approved by the FDA. Furthermore, a significant portion of raw materials may only be available from foreign sources. If the Company is unable to secure, on a timely basis, sufficient quantities of the materials it depends on to manufacture and market its products, it could have a materially adverse effect on the Company's business, financial condition, and results of operations.

Note 8. Fair Value Measurements

GAAP defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the principal or most advantageous market for the asset or liability at the measurement date (an exit price). These standards also establish a hierarchy that prioritizes observable and unobservable inputs used in measuring fair value of an asset or liability, as described below:

- *Level 1* – Inputs to measure fair value are based on quoted prices (unadjusted) in active markets on identical assets or liabilities;
- *Level 2* – Inputs to measure fair value are based on the following: a) quoted prices in active markets on similar assets or liabilities, b) quoted prices for identical or similar instruments in inactive markets, or c) observable (other than quoted prices) or collaborated observable market data used in a pricing model from which the fair value is derived; and
- *Level 3* – Inputs to measure fair value are unobservable and the assets or liabilities have little, if any, market activity; these inputs reflect the Company's own assumptions about the assumptions that market participants would use in pricing the assets or liabilities based on best information available in the circumstances.

As of September 30, 2021, cash equivalents include money market accounts. Short-term investments consist of certificates of deposit as well as investment-grade municipal bonds with original expiration dates within 12 months. The certificates of deposit are carried at amortized cost in the Company's condensed consolidated balance sheet, which approximates their fair value determined based on Level 2 inputs. The corporate and municipal bonds are classified as held-to-maturity and are carried at amortized cost net of allowance for credit losses, which approximates their fair value determined based on Level 2 inputs. The restrictions on restricted cash and short-term investments have a negligible effect on the fair value of these financial assets.

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The fair value of the Company's financial assets and liabilities measured on a recurring basis as of September 30, 2021 and December 31, 2020, are as follows:

	<u>Total</u>	<u>(Level 1)</u>	<u>(Level 2)</u>	<u>(Level 3)</u>
	(in thousands)			
Cash equivalents - money market	\$ 82,146	\$ 82,146	\$ —	\$ —
Restricted cash - money market	235	235	—	—
Short-term investments - certificates of deposit	5,102	—	5,102	—
Restricted short-term investments - certificates of deposit	2,200	—	2,200	—
Corporate and municipal bonds	3,039	—	3,039	—
Interest rate swap liabilities related to variable rate loans	(279)	—	(279)	—
Fair value measurement as of September 30, 2021	<u>\$ 92,443</u>	<u>\$ 82,381</u>	<u>\$ 10,062</u>	<u>\$ —</u>
Cash equivalents - money market	\$ 58,710	\$ 58,710	\$ —	\$ —
Restricted cash - money market	1,865	1,865	—	—
Short-term investments - certificates of deposit	9,089	—	9,089	—
Restricted short-term investments - certificates of deposit	2,200	—	2,200	—
Corporate and municipal bonds	3,855	—	3,855	—
Interest rate swap liabilities related to variable rate loans	(902)	—	(902)	—
Fair value measurement as of December 31, 2020	<u>\$ 74,817</u>	<u>\$ 60,575</u>	<u>\$ 14,242</u>	<u>\$ —</u>

The Company does not hold any Level 3 instruments that are measured at fair value on a recurring basis.

Nonfinancial assets and liabilities are not measured at fair value on a recurring basis but are subject to fair value adjustments in certain circumstances. These items primarily include investments in unconsolidated affiliates, long-lived assets, goodwill, and intangible assets for which the fair value is determined as part of the related impairment test. As of September 30, 2021, and December 31, 2020, there were no significant adjustments to fair value for nonfinancial assets or liabilities.

Note 9. Investments

A summary of the Company's investments that are classified as held-to-maturity are as follows:

	<u>Amortized Cost</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	<u>Fair Value</u>
	(in thousands)			
Corporate bonds	\$ 513	\$ —	\$ (1)	\$ 512
Municipal bonds	2,527	—	—	2,527
Total investments as of September 30, 2021	<u>\$ 3,040</u>	<u>\$ —</u>	<u>\$ (1)</u>	<u>\$ 3,039</u>
Corporate bonds	\$ 1,560	\$ —	\$ (1)	\$ 1,559
Municipal bonds	2,297	—	(1)	2,296
Total investments as of December 31, 2020	<u>\$ 3,857</u>	<u>\$ —</u>	<u>\$ (2)</u>	<u>\$ 3,855</u>

At each reporting period, the Company evaluates securities for impairment when the fair value of the investment is less than its amortized cost. The Company evaluated the underlying credit quality and credit ratings of the issuers, noting neither a significant deterioration since purchase nor any other factors that would indicate a material credit loss.

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The Company measures expected credit losses on held-to-maturity investments on a collective basis. All the Company's held-to-maturity investments were considered to be one pool. The estimate for credit losses considers historical loss information that is adjusted for current conditions and reasonable and supportable forecasts. Expected credit losses on held-to-maturity investments were not material to the condensed consolidated financial statements.

Investment in Hanxin

As a result of the ANP restructuring that was completed during the third quarter of 2021 (see Note 3), the Company has a 14% noncontrolling investment in Hanxin that is accounted for as an equity method investment.

The Company accounts for its share of the earnings or losses of Hanxin with a reporting lag of three months, as the financial statements of Hanxin are not completed on a basis that is sufficient for the Company to apply the equity method on a current basis. Hanxin became an equity method investment during the third quarter of 2021, and as such, no shares of earnings or losses of Hanxin were recorded in the condensed consolidated statement of operations for the three and nine months ended September 30, 2021.

Note 10. Goodwill and Intangible Assets

The table below shows the weighted-average life, original cost, accumulated amortization, and net book value by major intangible asset classification:

	<u>Weighted-Average Life (Years)</u>	<u>Original Cost</u> (in thousands)	<u>Accumulated Amortization</u> (in thousands)	<u>Net Book Value</u>
<i>Definite-lived intangible assets</i>				
IMS (UK) international product rights	10	\$ 9,416	\$ 4,865	\$ 4,551
Patents	12	486	329	157
Land-use rights	39	2,540	667	1,873
Subtotal	12	12,442	5,861	6,581
<i>Indefinite-lived intangible assets</i>				
Trademark	*	29,225	—	29,225
Goodwill - Finished pharmaceutical products	*	3,386	—	3,386
Subtotal	*	32,611	—	32,611
As of September 30, 2021	*	<u>\$ 45,053</u>	<u>\$ 5,861</u>	<u>\$ 39,192</u>
	<u>Weighted-Average Life (Years)</u>	<u>Original Cost</u> (in thousands)	<u>Accumulated Amortization</u> (in thousands)	<u>Net Book Value</u>
<i>Definite-lived intangible assets</i>				
IMS (UK) international product rights	10	\$ 9,561	\$ 4,223	\$ 5,338
Patents	12	486	297	189
Land-use rights	39	2,540	617	1,923
Subtotal	12	12,587	5,137	7,450
<i>Indefinite-lived intangible assets</i>				
Trademark	*	29,225	—	29,225
Goodwill - Finished pharmaceutical products	*	3,940	—	3,940
Subtotal	*	33,165	—	33,165
As of December 31, 2020	*	<u>\$ 45,752</u>	<u>\$ 5,137</u>	<u>\$ 40,615</u>

* Intangible assets with indefinite lives have an indeterminable average life.

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Goodwill

The changes in the carrying amounts of goodwill were as follows:

	<u>September 30,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
	(in thousands)	
Beginning balance	\$ 3,940	\$ 3,634
ANP restructuring	(374)	—
Currency translation	(180)	306
Ending balance	<u>\$ 3,386</u>	<u>\$ 3,940</u>

Primatene® Trademark

In January 2009, the Company acquired the exclusive rights to the trademark, domain name, website and domestic marketing, distribution and selling rights related to Primatene Mist®, an over-the-counter bronchodilator product, recorded at the allocated fair value of \$29.2 million, which is its carrying value as of September 30, 2021.

The trademark was determined to have an indefinite life. In determining its indefinite life, the Company considered the following: the expected use of the intangible; the longevity of the brand; the legal, regulatory and contractual provisions that affect their maximum useful life; the Company's ability to renew or extend the asset's legal or contractual life without substantial costs; effects of the regulatory environment; expected changes in distribution channels; maintenance expenditures required to obtain the expected future cash flows from the asset; and considerations for obsolescence, demand, competition and other economic factors.

Note 11. Inventories

Inventories consist of the following:

	<u>September 30,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
	(in thousands)	
Raw materials and supplies	\$ 45,752	\$ 47,051
Work in process	37,555	37,257
Finished goods	16,933	12,523
Total inventories	<u>\$ 100,240</u>	<u>\$ 96,831</u>

Charges of \$6.1 million and \$17.0 million were included in the cost of revenues in the Company's condensed consolidated statements of operations for the three and nine months ended September 30, 2021, respectively, to adjust the Company's inventory and related firm purchase commitments to their net realizable value. For the three and nine months ended September 30, 2020, charges of \$2.5 million and \$12.7 million were included in the cost of revenues, respectively, to adjust the Company's inventory and related firm purchase commitments to their net realizable value.

Losses on firm purchase commitments related to raw materials on order were \$3.5 million and \$4.2 million as of September 30, 2021 and 2020, respectively.

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Note 12. Property, Plant, and Equipment

Property, plant, and equipment consist of the following:

	<u>September 30,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
	(in thousands)	
Buildings	\$ 127,700	\$ 124,326
Leasehold improvements	27,356	30,028
Land	7,645	7,719
Machinery and equipment	207,595	211,666
Furniture, fixtures, and automobiles	27,123	26,482
Construction in progress	40,057	43,981
Total property, plant, and equipment	<u>437,476</u>	<u>444,202</u>
Less accumulated depreciation	(194,552)	(184,147)
Total property, plant, and equipment, net	<u>\$ 242,924</u>	<u>\$ 260,055</u>

Note 13. Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consisted of the following:

	<u>September 30,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
	(in thousands)	
Accrued customer fees and rebates	\$ 11,581	\$ 9,029
Accrued payroll and related benefits	27,324	24,597
Accrued product returns, current portion	14,823	10,190
Accrued loss on firm purchase commitments	3,449	1,223
Accrued litigation and settlements	—	13,780
Other accrued liabilities	10,076	12,328
Total accrued liabilities	<u>67,253</u>	<u>71,147</u>
Accounts payable	21,658	24,357
Total accounts payable and accrued liabilities	<u>\$ 88,911</u>	<u>\$ 95,504</u>

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Note 14. Debt

Debt consists of the following:

	<u>September 30,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
	(in thousands)	
<i>Line of Credit Facilities</i>		
Line of credit facility with China Everbright Bank - closed June 2021	\$ —	\$ 764
Line of credit facility with China Merchant Bank	—	382
Line of credit facility with Bank of Nanjing - deconsolidated (see Note 3)	—	153
Line of credit facility with Cathay Bank - closed in August 2021	—	—
Line of credit facility with East West Bank - closed in August 2021	—	—
Equipment line of credit facility with East West Bank - closed in August 2021	—	3,216
Revolving line of credit facility with Capital One N.A. due August 2026	—	—
<i>Term Loan</i>		
Term loan with Capital One N.A. due August 2026	70,000	—
<i>Mortgage Loans</i>		
Mortgage payable with East West Bank paid off May 2021	—	3,306
Mortgage payable with East West Bank paid off August 2021	—	3,334
Mortgage payable with Cathay Bank paid off August 2021	—	7,268
Mortgage payable with East West Bank due June 2027	8,393	8,510
<i>Equipment Loans</i>		
Equipment loan with East West Bank paid off June 2021	—	612
Equipment loan with East West Bank paid off August 2021	—	4,000
Equipment loan with East West Bank paid off August 2021	—	5,254
<i>Other Loans and Payment Obligations</i>		
Acquisition loan with Cathay Bank paid off August 2021	—	8,710
French government loan paid off July 2021	—	64
French government loans due December 2026	339	350
<i>Equipment under Finance Leases</i>	471	526
Total debt	79,203	46,449
Less current portion of long-term debt	2,256	12,263
Less: Loan issuance costs	1,395	84
Long-term debt, net of current portion and unamortized debt issuance costs	<u>\$ 75,552</u>	<u>\$ 34,186</u>

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As of September 30, 2021, the fair value of the loans listed above approximated their carrying amount. The interest rate used in the fair value estimation was determined to be a Level 2 input. For the mortgage loan with East West Bank, the Company has entered into fixed interest rate swap contracts to exchange the variable interest rate for a fixed interest rate over the life of the debt instrument without the exchange of the underlying notional debt amount.

Credit Agreement with Capital One N.A. - Due August 2026

In August 2021, the Company entered into a \$140.0 million credit agreement with Capital One N.A. acting as a lender and as agent for other lenders. Under the terms of the credit agreement, the Company borrowed \$70.0 million in the form of a term loan. Proceeds from the loan were used to pay down certain of the Company's outstanding loans and revolving lines of credit with Cathay Bank and East West Bank. The interest rate on the term loan is based on a variable interest rate, plus an applicable margin rate ranging between 0.5% and 2.5%, determined based on the Company's net leverage ratio as defined by the terms of the agreement. The loan matures in August 2026.

At September 30, 2021, the interest rate on this loan was 1.84%.

The loan requires principal payments of \$1.8 million per year for the first two years, which increases to \$3.5 million during the third and fourth year and to \$3.9 million in the fifth year, with the remaining balance due at maturity. The loan is secured by substantially all of the Company's assets, excluding the assets of ANP.

The credit agreement provides for a \$70.0 million revolving credit facility, which bears a variable interest rate, plus a fixed margin.

In conjunction with the new credit agreement, the Company entered into an interest rate swap agreement with Capital One N.A., with a notional amount of \$55.0 million to exchange the variable interest rate on the new term loan for a fixed rate of 0.93%.

The Company incurred approximately \$1.4 million in issuance costs in connection with this credit agreement, which is being amortized over the term of the loan.

Note 15. Income Taxes

The following table sets forth the Company's income tax provision for the periods indicated:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2021	2020	2021	2020
	(in thousands)			
Income before taxes	\$ 37,646	\$ 7,078	\$ 56,977	\$ 11,379
Income tax provision	6,686	2,285	13,436	4,490
Net income	<u>\$ 30,960</u>	<u>\$ 4,793</u>	<u>\$ 43,541</u>	<u>\$ 6,889</u>
Income tax provision as a percentage of income before income taxes	17.8 %	32.3 %	23.6 %	39.5 %

The change in the Company's effective tax rate for the three and nine months ended September 30, 2021, was primarily due to differences in pre-tax income positions and timing of discrete tax items.

Valuation Allowance

In assessing the need for a valuation allowance, management considers whether it is more likely than not that some portion or all of the deferred income tax assets will be realized. Ultimately, realization depends on the existence of future

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taxable income. Management considers sources of taxable income such as income in prior carryback periods, future reversal of existing deferred taxable temporary differences, tax-planning strategies, and projected future taxable income.

The Company continues to record a full valuation allowance on the net deferred income tax assets of its subsidiary AFP and will continue to do so until AFP generates sufficient taxable income to realize its deferred income tax assets.

For purposes of computing its annual effective tax rate, the Company did not benefit from its losses in the states where it files separately. This increased the Company's income tax expense by \$0.1 million and \$0.3 million for the three and nine months ended September 30, 2021, respectively. The increase in the Company's income tax provision for the three and nine months ended September 30, 2020 was \$0.2 million and \$0.4 million, respectively.

Note 16. Stockholders' Equity

Share Buyback Program

Pursuant to the Company's existing share buyback program, the Company purchased 317,212 and 820,637 shares of its common stock during the three and nine months ended September 30, 2021, for total consideration of \$6.1 million and \$15.4 million, respectively. The Company purchased 214,256 and 1,190,362 shares of its common stock during the three and nine months ended September 30, 2020, for total consideration of \$4.3 million and \$21.0 million, respectively.

In August 2021, the Company's Board of Directors authorized an increase of \$20.0 million to the Company's share buyback program, which is expected to continue for an indefinite period of time. Since the inception of the program, the Company's Board of Directors have authorized a total of \$160.0 million to the Company's share buyback program. The primary goal of the program is to offset dilution created by the Company's equity compensation programs.

Purchases are made through open market and private block transactions pursuant to Rule 10b5-1 plans, privately negotiated transactions or other means as determined by the Company's management and in accordance with the requirements of the SEC and applicable laws. The timing and actual number of treasury share purchases will depend on a variety of factors including price, corporate and regulatory requirements, and other conditions. These treasury share purchases are accounted for under the cost method and are included as a component of treasury stock in the Company's condensed consolidated balance sheets.

Amended and Restated 2015 Equity Incentive Plan

As of September 30, 2021, the Company reserved an aggregate of 5,997,738 shares of common stock for future issuance under the Amended and Restated 2015 Equity Incentive Plan, or the 2015 Plan, including 1,187,386 shares, which were reserved in January 2021 pursuant to the evergreen provision in the 2015 Plan.

2014 Employee Stock Purchase Plan

As of September 30, 2021, the Company has issued 890,904 shares of common stock under the ESPP, and 1,109,096 shares of its common stock remains available for issuance under the ESPP.

In May 2021, the Company issued 83,354 shares at a weighted-average purchase price of \$15.25 per share under the ESPP. For the three and nine months ended September 30, 2021, the Company recorded ESPP expense of \$0.2 million and \$0.5 million, respectively. For the three and nine months ended September 30, 2020, the Company recorded ESPP expense of \$0.1 million and \$0.5 million, respectively.

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Share-Based Award Activity and Balances (excluding the ANP Equity Plan)

The Company accounts for share-based compensation payments in accordance with ASC 718, which requires measurement and recognition of compensation expense at fair value for all share-based payment awards made to employees and directors. Under these standards, the fair value of option awards and the option components of the Employee Stock Purchase Plan awards are estimated at the grant date using the Black-Scholes option-pricing model. The fair value of RSUs is estimated at the grant date using the Company's common share price. The portion that is ultimately expected to vest is amortized and recognized in compensation expense on a straight-line basis over the requisite service period, generally from the grant date to the vesting date.

The weighted-averages for key assumptions used in determining the fair value of options granted during the three and nine months ended September 30, 2021 and 2020, are as follows:

	<u>Three Months Ended</u> <u>September 30,</u>		<u>Nine Months Ended</u> <u>September 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
Average volatility	41.4 %	43.7 %	42.1 %	43.1 %
Average risk-free interest rate	1.1 %	0.5 %	1.2 %	0.8 %
Weighted-average expected life in years	6.3	6.3	6.1	5.7
Dividend yield rate	— %	— %	— %	— %

A summary of option activity for the nine months ended September 30, 2021, is presented below:

	<u>Options</u>	<u>Weighted-Average</u> <u>Exercise</u> <u>Price</u>	<u>Weighted-Average</u> <u>Remaining</u> <u>Contractual</u> <u>Term (Years)</u>	<u>Aggregate</u> <u>Intrinsic</u> <u>Value⁽¹⁾</u> <u>(in thousands)</u>
Outstanding as of December 31, 2020	8,580,475	\$ 15.00		
Options granted	1,436,929	18.25		
Options exercised	(899,436)	13.49		
Options cancelled	(155,784)	17.02		
Options expired	(56,826)	14.67		
Outstanding as of September 30, 2021	<u>8,905,358</u>	\$ 15.65	5.34	\$ 33,500
Exercisable as of September 30, 2021	<u>6,021,669</u>	\$ 15.11	3.90	\$ 26,145

⁽¹⁾ The aggregate intrinsic value is calculated as the difference between the exercise price of the underlying awards and the estimated fair value of the Company's common stock for those awards that have an exercise price below the estimated fair value at September 30, 2021.

For the three and nine months ended September 30, 2021, the Company recorded an expense of \$1.9 million and \$6.2 million, respectively, related to stock options granted. For the three and nine months ended September 30, 2020, the Company recorded an expense of \$1.9 million and \$7.1 million, respectively, related to stock options granted under all plans.

In April 2020, Jason Shandell resigned from his position as the Company's President and General Counsel and as a member of the Company's Board of Directors. In connection with his resignation, the Company and Mr. Shandell entered into a separation agreement. As part of the separation agreement, the Company agreed to accelerate 80% of his unvested stock options and extended the expiration date of certain vested stock option awards. As a result of this modification, the Company incurred share-based compensation expense of \$0.7 million, which is included within general and administration expenses in the condensed consolidated statement of operations for the nine months ended September 30, 2020.

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Information relating to option grants and exercises is as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
	(in thousands, except per share data)			
Weighted-average grant date fair value per option share	\$ 8.00	\$ 8.64	\$ 7.62	\$ 5.50
Intrinsic value of options exercised	2,176	1,687	5,292	8,661
Cash received from options exercised	3,953	3,195	12,122	23,534
Total fair value of the options vested during the period	112	121	8,162	9,965

A summary of the status of the Company's non-vested options as of September 30, 2021, and changes during the nine months ended September 30, 2021, is presented below:

	Options	Weighted-Average Grant Date Fair Value
Non-vested as of December 31, 2020	2,825,652	\$ 6.50
Options granted	1,436,929	7.62
Options vested	(1,223,108)	6.67
Options forfeited	(155,784)	6.98
Non-vested as of September 30, 2021	<u>2,883,689</u>	6.96

As of September 30, 2021, there was \$14.1 million of total unrecognized compensation cost, net of forfeitures, related to non-vested stock option based compensation arrangements granted under all plans. The cost is expected to be recognized over a weighted-average period of 2.6 years and will be adjusted for future changes in estimated forfeitures.

Restricted Stock Units

The Company grants restricted stock units, or RSUs, to certain employees and members of the Board of Directors with a vesting period of up to five years. The grantee receives one share of common stock at a specified future date for each RSU awarded. The RSUs may not be sold or otherwise transferred until certificates of common stock have been issued, recorded, and delivered to the participant. The RSUs do not have any voting or dividend rights prior to the issuance of certificates of the underlying common stock. The share-based expense associated with these grants was based on the Company's common stock fair value at the time of grant and is amortized over the requisite service period, which generally is the vesting period using the straight-line method. During the three and nine months ended September 30, 2021, the Company recorded total expenses of \$1.9 million and \$6.2 million, respectively, related to RSU awards granted. During the three and nine months ended September 30, 2020, the Company recorded expenses of \$2.0 million and \$8.0 million, respectively, related to RSU awards granted.

As part of the separation agreement with Mr. Shandell, the Company agreed to accelerate the vesting of 80% of his RSU awards. As a result of this modification, the Company incurred share-based compensation expense of \$1.6 million, which is included within general and administrative expenses in the condensed consolidated statement of operations for the nine months ended September 30, 2020.

As of September 30, 2021, there was \$15.0 million of total unrecognized compensation cost, net of forfeitures, related to non-vested RSU-based compensation arrangements granted under all plans. The cost is expected to be recognized over a weighted-average period of 2.6 years and will be adjusted for future changes in estimated forfeitures.

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Information relating to RSU grants and deliveries is as follows:

	Total RSUs Issued	Total Fair Market Value of RSUs Issued as Compensation⁽¹⁾ (in thousands)
RSUs outstanding at December 31, 2020	1,156,518	
RSUs granted	600,207	\$ 10,941
RSUs forfeited	(64,030)	
RSUs vested ⁽²⁾	(493,007)	
RSUs outstanding at September 30, 2021	<u>1,199,688</u>	

⁽¹⁾ The total fair market value is derived from the number of RSUs granted times the current stock price on the date of grant.

⁽²⁾ Of the vested RSUs, 167,034 shares of common stock were surrendered to fulfill tax withholding obligations.

The 2018 ANP Equity Incentive Plan

In December 2018, ANP's board of directors approved the 2018 ANP Equity Incentive Plan, or the 2018 Plan, which was set to expire in December 2023. The 2018 Plan permitted the grant of stock options and other equity awards in ANP shares to ANP employees.

During the second quarter of 2021, in connection with the ANP restructuring, the 2018 Plan was terminated.

At the time of the 2018 Plan termination, the number of stock options outstanding was 5,018,880. As part of the termination, ANP cash settled 4,091,080 stock options, of which, 1,944,771 stock options were vested and 2,146,309 stock options were unvested, for \$0.8 million which approximated the fair value of these awards at the time of settlement. The cash settlement of these awards was recorded as a reduction in equity.

For the remaining 927,800 stock option awards that were outstanding under the 2018 Plan, of which 56,925 stock options were vested and 870,875 were unvested, the Company cancelled these awards and issued replacement awards under the 2015 Plan. The modified awards vest over periods ranging from 1 to 2 years and have a 10-year contractual term. The cancellation and replacement of the awards was accounted for as a modification in accordance with ASC 718.

As a result of the modification, the Company incurred \$2.3 million of share-based compensation expense, of which \$1.8 million was recorded within general and administrative expenses in the condensed consolidated statement of operations for the nine months ended September 30, 2021, and the remaining \$0.5 million which will be recognized over the vesting period of the modified awards.

Prior to the termination of the 2018 Plan, during the three and nine months ended September 30, 2020, the Company recorded expense of \$0.2 million and \$0.5 million related to stock options issued by ANP under the 2018 Plan, respectively.

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Share-based Compensation Expense

The Company recorded share-based compensation expense, which is included in the Company's condensed consolidated statement of operations as follows:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2021	2020	2021	2020
	(in thousands)			
Cost of revenues	\$ 889	\$ 947	\$ 2,967	\$ 3,276
Operating expenses:				
Selling, distribution, and marketing	164	120	438	350
General and administrative	2,533	2,899	10,069	11,170
Research and development	333	404	1,363	1,369
Total share-based compensation	<u>\$ 3,919</u>	<u>\$ 4,370</u>	<u>\$ 14,837</u>	<u>\$ 16,165</u>

Note 17. Employee Benefits*401(k) Plan*

The Company has a defined contribution 401(k) plan, or the Plan, whereby eligible employees voluntarily contribute up to a defined percentage of their annual compensation. The Company matches contributions at a rate of 50% on the first 6% of employee contributions, and pays the administrative costs of the Plan. Total employer contributions for the three and nine months ended September 30, 2021 were approximately \$0.5 million and \$1.5 million, respectively, compared to the prior year expense of \$0.4 million and \$1.4 million for the three and nine months ended September 30, 2020, respectively.

Defined Benefit Pension Plan

The Company's subsidiary, AFP, has an obligation associated with a defined-benefit plan for its eligible employees. This plan provides benefits to the employees from the date of retirement and is based on the employee's length of time employed by the Company. The calculation is based on a statistical calculation combining a number of factors that include the employee's age, length of service, and AFP employee turnover rate.

The liability under the plan is based on a discount rate of 0.3% as of September 30, 2021 and December 31, 2020. The liability is included in accrued liabilities in the accompanying condensed consolidated balance sheets. The plan is currently unfunded, and the benefit obligation under the plan was \$2.9 million at September 30, 2021 and December 31, 2020. The Company recorded an immaterial amount of expense under the plan for the three and nine months ended September 30, 2021 and 2020.

Deferred Compensation Plan

In December 2019, the Company established a non-qualified deferred compensation plan. The deferred compensation plan allows certain eligible participants to defer a portion of their cash compensation and provides a matching contribution at the discretion of the Company. The plan obligations are payable upon retirement, termination of employment and/or certain other times in a lump-sum distribution or in installments, as elected by the participant in accordance with the plan. Participants can allocate their deferred compensation amongst various investment options with earnings accruing to the participant. The Company has established a Rabbi Trust to fund the plan obligations and to hold the plan assets. Eligible participants began contributing to the plan in January 2020. The plan assets were valued at approximately \$2.7 million as of September 30, 2021. The plan liabilities were valued at approximately \$2.7 million as

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of September 30, 2021. As of December 31, 2020, the plan assets and liabilities were valued at approximately \$1.6 million and \$1.7 million, respectively.

Note 18. Commitments and Contingencies

Purchase Commitments

As of September 30, 2021, the Company has entered into commitments to purchase equipment and raw materials for an aggregate amount of approximately \$56.2 million. The Company anticipates that most of these commitments with a remaining term in excess of one year will be fulfilled by 2022.

Note 19. Related Party Transactions

Subsequent to the ANP restructuring discussed in Note 3, which involved various related parties, Hanxin is no longer a wholly-owned subsidiary of the Company and was deconsolidated in the third quarter of 2021.

The Company determined that it has significant influence over Hanxin as a result of its 14% ownership interest, its seat on Hanxin's board of directors, and Henry Zhang's position as an equity holder, general manager, and chairman of the board of directors of Hanxin, given he is the son of Dr. Jack Zhang. Additionally, Dr. Mary Luo and Dr. Jack Zhang, through an affiliated entity, have an ownership interest in Hanxin and as such Hanxin continues to be a related party after the restructuring.

As of September 30, 2021, the Company had a receivable from Hanxin of approximately \$2.5 million, the majority of which was collected subsequent to the end of the quarter.

Note 20. Litigation

Amphastar Pharmaceuticals, Inc. v. Aventis Pharma, SA

In January 2009, the Company filed a qui tam complaint in the U.S. District Court for the Central District of California, alleging that Aventis Pharma S.A., or Aventis, through its acquisition of a patent through false and misleading statements to the U.S. Patent and Trademark Office, as well as through false and misleading statements to the FDA, overcharged the federal and state governments for its Lovenox® product.

On May 11, 2017, the Company's lawsuit against Aventis was dismissed for lack of jurisdiction. On July 14, 2017, Aventis filed an application with the District Court for entitlement to attorneys' fees and expenses. On November 20, 2017, the District Court issued its order granting Aventis' application for fees, and on November 13, 2020, the Court issued an Order ("November Order") awarding Aventis \$12.1 million in attorneys' fees and \$0.7 million in cost and expenses. The Company recorded \$12.8 million in other income (expenses), in the consolidated statement of operations for the year ended December 31, 2020.

On May 3, 2021, the Court issued a further Order based upon supplemental application to the Court seeking fees, expenses, and interest for the period after, and not covered by, the November Order. The Court awarded Aventis an additional \$4.4 million bringing the total amount awarded to Aventis to \$17.2 million.

On June 30, 2021, the Company and Aventis entered into a settlement agreement to settle the attorney fees' and expenses claim for \$14.5 million. The additional \$1.7 million was recorded in other income (expenses), in the condensed consolidated statement of operations. The settlement was paid in full in the third quarter of 2021.

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Regadenoson (0.4 mg/5 mL, 0.08 mg/mL) Patent Litigation

On February 25, 2020, Astellas US LLC, Astellas Pharma US, Inc., and Gilead Sciences, Inc. (collectively, “Astellas-Gilead”) filed a Complaint in the United States District Court for the District of Delaware against IMS for infringement of U.S. Patent Nos. 8,106,183 (the “183 patent”), RE47,301 (the “301 patent”), and 8,524,883 (the “883 patent”) (collectively, “Astellas-Gilead Patents”) with regard to IMS’s ANDA No. 214,252 for approval to manufacture and sell 0.4 mg/5 mL (0.08 mg/mL) intravenous solution of Regadenoson. On March 4, 2020, IMS filed its Answer and Counterclaims. On March 30, 2020, the Court issued an Order allowing the Company to join pending consolidated litigation with five other generic Regadenoson ANDA filers involving similar claims. Trial is currently scheduled for January 2022. The Company’s 30-month FDA stay expires August 10, 2022. Currently, this lawsuit does not expose the Company to any liabilities, as the product has not been launched. The Company intends to vigorously defend this patent lawsuit.

Ramirez v. Amphastar Pharmaceuticals, Inc.

On May 29, 2020, Priscilla Ramirez (“Ramirez”), a former employee filed a PAGA lawsuit for alleged violations of various California labor laws pertaining to wage and hour against the Company. The Company accrued the amount of \$1.0 million for this litigation as of March 31, 2021. On April 5, 2021, the parties reached a settlement for \$1.0 million. On June 9, 2021, Ramirez submitted a motion to the Court to approve the settlement. On August 16, 2021, the Court approved Ramirez’s motion to approve the settlement. On September 13, 2021, consistent with the terms of the settlement agreement, the Company remitted payment for this case, thus resolving the matter.

Other Litigation

The Company is also subject to various other claims, arbitrations, and lawsuits from time to time arising in the ordinary course of business.

The Company records a provision for contingent losses when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In the opinion of management, the ultimate resolution of any such matters is not expected to have a material adverse effect on its financial position, results of operations, or cash flows; however, the results of litigation and claims are inherently unpredictable and the Company’s view of these matters may change in the future. Regardless of the outcome, litigation can have an adverse impact on the Company because of defense and settlement costs, diversion of management resources, and other factors.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following is a discussion and analysis of the consolidated operating results, financial condition, liquidity and cash flows of our company as of and for the periods presented below. The following discussion and analysis should be read in conjunction with the "Condensed Consolidated Financial Statements" and the related notes thereto included in this Quarterly Report on Form 10-Q, or Quarterly Report. This discussion contains forward-looking statements that are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Actual results could differ materially from those discussed in or implied by forward-looking statements. These risks, uncertainties, and other factors include, among others, those identified under the "Special Note About Forward-Looking Statements," above and described in greater detail elsewhere in this Quarterly Report and in our Annual Report on Form 10-K for the year ended December 31, 2020, particularly in Item 1A. "Risk Factors".

Overview

We are a bio-pharmaceutical company that focuses primarily on developing, manufacturing, marketing and selling technically challenging generic and proprietary injectable, inhalation, and intranasal products as well as insulin API products. We currently manufacture and sell over 20 products.

We are currently developing a portfolio of 13 generic abbreviated new drug applications, or ANDAs, three biosimilar insulin product candidates and four proprietary product candidates, which are in various stages of development and target a variety of indications. Five of the ANDAs and one NDA are currently on file with the FDA.

Our largest products by net revenues currently include Primatene Mist[®], glucagon, epinephrine, enoxaparin sodium injection, lidocaine jelly and sterile solution, and phytonadione. During the second quarter of 2020, we launched our epinephrine injection, USP 30mg/mL multiple dose vial product. In December 2020, the FDA granted approval of our glucagon for injection emergency kit, 1mg, which we launched in February 2021.

To complement our internal growth and expertise, we have made several strategic acquisitions of companies, products and technologies. These acquisitions collectively have strengthened our core injectable and inhalation product technology infrastructure by providing additional manufacturing, marketing, and research and development capabilities, including the ability to manufacture raw materials, API and other components for our products.

Included in these acquisitions are marketing authorizations for 33 products in the UK, Ireland, Australia, and New Zealand, representing 11 different injectable chemical entities. We are in the process of transferring the manufacturing of these products to our facilities in California. We plan to launch these products in the UK once we receive the required approvals from the UK Medicines and Healthcare products Regulatory Agency.

In July 2018, our Chinese subsidiary, ANP, completed a private placement of its common equity interest and received approximately \$56.3 million of cash proceeds. We retained approximately 58% of the equity interest in ANP following the private placement.

During the third quarter of 2021, we restructured the equity ownership of ANP, whereby we purchased an additional ownership interest in ANP from certain equity holders of ANP (the "Sellers"), and split-off certain subsidiaries of ANP. We paid approximately \$29.4 million in cash and contributed approximately 80% of Hanxin Pharmaceutical Technology Co., Ltd, or Hanxin, to the Sellers in exchange for additional ownership interest in ANP, resulting in our ownership of ANP increasing to approximately 85%, while ANP retained approximately 20% of ownership in Hanxin. Hanxin's wholly-owned subsidiaries, Nanjing Baixin Trading Co., Ltd., and Nanjing Letop Biological Technology Co., Ltd., were included in the split-off of Hanxin.

In August 2021, we entered into a second Share Purchase Agreement, or Second SPA, with the sole remaining equity holder of ANP to acquire the remaining approximately 15% of ownership interest in ANP. The total cash paid for this transaction was approximately \$22.5 million. As a result of the transaction, our ownership interest in ANP increased to

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100%. The Sellers in both transactions include some of our executive officers, directors and other related parties who participated in the ANP Private Placement in 2018, see Note 3 to the condensed consolidated financial statements.

The reduction of our ownership in Hanxin to 20%, resulted in ANP experiencing a “loss of control” of a subsidiary as defined by generally accepted accounting principles, or GAAP. Loss of control is deemed to have occurred when, among other things, a parent company owns less than a majority of the outstanding common stock in the subsidiary, lacks a controlling financial interest in the subsidiary and, is unable to unilaterally control the subsidiary through other means such as having, or being able to obtain, the power to elect a majority of the subsidiary's board of directors based solely on contractual rights or ownership of shares holding a majority of the voting power of the subsidiary's voting securities. These loss-of-control factors were met with respect to ANP's ownership interest in Hanxin after the restructuring. Accordingly, we deconsolidated Hanxin and recorded a \$13.6 million gain on deconsolidation, which is recognized in other income (expenses), net in the consolidated statement of operations for the three and nine months ended September 30, 2021.

Subsequent to the restructuring, during the third quarter, Hanxin received additional capital contributions from its equity owners further reducing ANP's ownership interest to approximately 14%.

In addition to the retained noncontrolling investment in Hanxin, we maintain a seat of Hanxin's board of directors. Additionally, Henry Zhang, a relative of Dr. Jack Zhang and Dr. Mary Luo, holds a significant stake in Hanxin and is also Hanxin's general manager, and chairman of the board of directors. As a result, we determined that we have significant influence over Hanxin and as such the retained noncontrolling investment in Hanxin is accounted for as an equity method investment. Hanxin continues to be a related party subsequent to the restructuring.

COVID-19 Pandemic

In March 2020, the World Health Organization declared the outbreak of a novel coronavirus, or COVID-19, as a pandemic, which continues to spread throughout the world, including locations where we operate, such as the United States, China and France. We have been actively monitoring the COVID-19 pandemic, including regarding the Delta variant, and its impact globally. Currently, our production facilities in all of our locations continue to operate as they had prior to the COVID-19 pandemic with few changes, other than for enhanced safety measures intended to prevent the spread of the virus.

As a result of the COVID-19 pandemic, during the first half of 2020, sales of Primatene Mist® and certain hospital products increased, while sales of certain products frequently used in elective procedures, such as Cortrosyn® and lidocaine products decreased. We saw these trends continue in late 2020 and early 2021 when COVID cases trended higher. Starting in the second quarter of 2021, the sales of these products, frequently used in elective procedures returned to their normal level.

Some of our ongoing clinical trials experienced short-term interruptions in the recruitment of patients due to the COVID-19 pandemic, as hospitals prioritize their resources towards the COVID-19 pandemic and governments impose travel restrictions. Some clinical trials experienced increased expenses due to new protocols to protect participants from COVID-19. Additionally, certain suppliers had difficulties meeting their delivery commitments.

It is not possible at this time to estimate the complete impact that COVID-19 could have on our business, including our customers and suppliers, as the impact will depend on future developments, which are highly uncertain and cannot be predicted. Infections may resurge or become more widespread and the limitation on our ability to travel and timely sell and distribute our products, as well as any closures or supply disruptions, may be extended for longer periods of time, all of which would have a negative impact on our business, financial condition and operating results.

The COVID-19 pandemic has and will continue to adversely affect global economies and financial markets, potentially resulting in an economic downturn that could affect demand for our products and impact our operating results. Even after the COVID-19 pandemic has subsided, we may continue to experience an adverse impact to our business as a result of the continued global economic impact of the pandemic. We cannot anticipate all of the ways in which health epidemics

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such as COVID-19 could adversely impact our business. See the “Risk Factors” section for further discussion of the possible impact of the COVID-19 pandemic on our business.

Business Segments

As of September 30, 2021, our performance is assessed and resources are allocated based on the following two reportable segments: (1) finished pharmaceutical products and (2) API products. The finished pharmaceutical products segment manufactures, markets and distributes Primatene Mist[®], glucagon, enoxaparin, naloxone, phytonadione, lidocaine, epinephrine, as well as various other critical and non-critical care drugs. The API segment manufactures and distributes RHI API and porcine insulin API for external customers and internal product development. Information reported herein is consistent with how it is reviewed and evaluated by our chief operating decision maker. Factors used to identify our segments include markets, customers and products.

For more information regarding our segments, see “Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Segment Reporting.”

Results of Operations

Three Months Ended September 30, 2021 Compared to Three Months Ended September 30, 2020

Net revenues

	Three Months Ended September 30,		Change	
	2021	2020	Dollars	%
	(in thousands)			
Net revenues				
Finished pharmaceutical products	\$ 108,990	\$ 81,335	\$ 27,655	34 %
API	3,208	2,096	1,112	53 %
Total net revenues	<u>\$ 112,198</u>	<u>\$ 83,431</u>	<u>\$ 28,767</u>	<u>34 %</u>
Cost of revenues				
Finished pharmaceutical products	\$ 54,388	\$ 41,789	\$ 12,599	30 %
API	6,627	5,134	1,493	29 %
Total cost of revenues	<u>\$ 61,015</u>	<u>\$ 46,923</u>	<u>\$ 14,092</u>	<u>30 %</u>
Gross profit	<u>\$ 51,183</u>	<u>\$ 36,508</u>	<u>\$ 14,675</u>	<u>40 %</u>
<i>as % of net revenues</i>		<i>46 %</i>		<i>44 %</i>

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The increase in net revenues of the finished pharmaceutical products for the three months ended September 30, 2021 was due to the following changes:

	Three Months Ended September 30,		Change	
	2021	2020 (in thousands)	Dollars	%
Finished pharmaceutical products net revenues				
Primatene Mist®	\$ 16,561	\$ 12,988	\$ 3,573	28 %
Epinephrine	13,892	5,370	8,522	159 %
Glucagon	12,189	—	12,189	N/A
Lidocaine	11,649	10,657	992	9 %
Phytonadione	11,591	10,470	1,121	11 %
Enoxaparin	8,034	11,647	(3,613)	(31)%
Naloxone	8,028	8,739	(711)	(8)%
Other finished pharmaceutical products	27,046	21,464	5,582	26 %
Total finished pharmaceutical products net revenues	\$ 108,990	\$ 81,335	\$ 27,655	34 %

We launched glucagon for injection emergency kit, 1mg in the first quarter of 2021. The continued growth in sales of Primatene Mist® was due to increased unit volumes, which was primarily a result of the continued success of our advertising campaign. The increase in sales of lidocaine and epinephrine was primarily due to an increase in unit volumes, as a result of higher demand due to competitor shortages. The increase in sales of phytonadione was primarily due to higher average selling price. The decrease in sales of enoxaparin was primarily due to lower average selling price as a competitor re-entered the market during the second quarter of 2021. The decrease in sales of Naloxone was primarily due to lower average selling price as a result of new competition. The increase in sales for other finished pharmaceutical products was primarily due to higher unit volumes as a result of competitor shortages during the third quarter of this year.

We anticipate that sales of naloxone and enoxaparin will continue to fluctuate in the future as a result of changing levels of competition.

Sales of API primarily depend on the timing of customer purchases. We anticipate that sales of API will continue to fluctuate and may decrease due to the inherent uncertainties related to sales to MannKind Corporation pursuant to our supply agreement with them. In addition, most of our API sales are denominated in euros, and the fluctuation in the value of euros versus the U.S. dollar has had, and will continue to have, an impact on API sales revenues in the near term.

A significant portion of our customer shipments in any period relate to orders received and shipped in the same period, generally resulting in low product backlog relative to total shipments at any time. However, during the third quarter of 2021, we experienced a backlog of approximately \$12 million for various products, including glucagon, epinephrine and phytonadione because of the higher than anticipated demand for these products, partially brought on by competitor shortages. We are working to resolve this issue prior to year-end and believe that we will be able to reduce the backlog in the near future. Historically, our backlog has not been a meaningful indicator in any given period of our ability to achieve any particular level of overall revenue or financial performance.

Gross margins

The increase in sales of Primatene Mist® and our epinephrine injection multiple dose vial, as well as the launch of glucagon for injection emergency kit during the first quarter of 2021, which are higher-margin products, helped increase our gross margins for the three months ended September 30, 2021. These increases in gross margins were partially offset by lower pricing and increased costs for enoxaparin, particularly the cost for heparin raw material, which is used as the starting material for enoxaparin.

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The cost of heparin may increase further, putting downward pressure on our gross margins. However, we believe that this trend will be offset by increased sales of our higher-margin products, including Primatene Mist[®], epinephrine multi dose vials, and glucagon. Additionally, we have not seen significant supply disruptions due to the COVID-19 pandemic at this time, but we are continuing to monitor our supply chain for any potential problems.

Selling, distribution and marketing, and general and administrative

	Three Months Ended September 30,		Change	
	2021	2020 (in thousands)	Dollars	%
Selling, distribution, and marketing	\$ 4,745	\$ 3,673	\$ 1,072	29 %
General and administrative	\$ 10,910	\$ 11,674	\$ (764)	(7)%

The increase in selling, distribution, and marketing expenses was primarily due to marketing expenses related to Primatene Mist[®]. The decrease in general and administrative expense was primarily due to a decrease in legal expenses.

We expect that selling, distribution and marketing expenses will increase due to the increase in marketing expenditures for Primatene Mist[®]. Legal fees may fluctuate from period to period due to the timing of patent challenges and other litigation matters.

Research and development

	Three Months Ended September 30,		Change	
	2021	2020 (in thousands)	Dollars	%
Salaries and personnel-related expenses	\$ 5,934	\$ 6,774	\$ (840)	(12)%
Clinical trials	234	2,544	(2,310)	(91)%
FDA fees	109	44	65	148 %
Testing, operating and lab supplies	205	3,344	(3,139)	(94)%
Depreciation	2,546	2,590	(44)	(2)%
Other expenses	1,731	2,348	(617)	(26)%
Total research and development expenses	<u>\$ 10,759</u>	<u>\$ 17,644</u>	<u>\$ (6,885)</u>	<u>(39)%</u>

Research and development expense decreased due to a decrease in clinical trial expense as a result of the completion of one of our clinical trial studies at the end of 2020 and delays in other studies. Additionally, the restructuring of ANP and the deconsolidation of Hanxin and its subsidiaries resulted in the decrease in salary and personnel-related expense and testing, operating and lab supplies expenses during the third quarter.

Research and development costs consist primarily of costs associated with the research and development of our product candidates including the cost of developing APIs. We expense research and development costs as incurred.

We have made, and expect to continue to make, substantial investments in research and development to expand our product portfolio and grow our business. We expect that research and development expenses will increase on an annual basis due to increased clinical trial costs related to our biosimilar and inhalation product candidates. These expenditures will include costs of APIs developed internally as well as APIs purchased externally, the cost of purchasing reference listed drugs and the costs of performing the clinical trials. As we undertake new and challenging research and development projects, we anticipate that the associated costs will increase significantly over the next several quarters and years. Over the past year, some of our ongoing clinical trials experienced short term interruptions in the recruitment of patients due to the COVID-19 pandemic, as hospitals prioritized their resources towards the COVID-19 pandemic and government imposed travel restrictions. These conditions may in turn delay spending and the results of these trials. Additionally, some clinical trials experienced increased expenses due to new protocols to protect participants from COVID-19.

Other income, net

	Three Months Ended September 30,		Change	
	<u>2021</u>	<u>2020</u>	<u>Dollars</u>	<u>%</u>
	(in thousands)			
Other income, net	\$ 13,263	\$ 3,575	\$ 9,688	271 %

During the third quarter of 2021, we completed the restructuring of ANP, whereby our ownership interest in ANP increased to 100% and ANP's ownership interest in Hanxin and its subsidiaries was reduced to approximately 14%. As a result of the loss in control over Hanxin, we deconsolidated Hanxin and recorded a \$13.6 million gain on deconsolidation. For more information regarding our ANP restructuring, see Note 3 to the condensed consolidated financial statements.

Income tax provision

	Three Months Ended September 30,		Change	
	<u>2021</u>	<u>2020</u>	<u>Dollars</u>	<u>%</u>
	(in thousands)			
Income tax provision	\$ 6,686	\$ 2,285	\$ 4,401	NM
<i>Effective tax rate</i>	<i>18 %</i>	<i>32 %</i>		

Our effective tax rate for the three months ended September 30, 2021 decreased in comparison to the three months ended September 30, 2020, primarily due to differences in pre-tax income positions and timing of discrete tax items.

Nine Months Ended September 30, 2021 Compared to Nine Months Ended September 30, 2020

Net revenues

	Nine Months Ended September 30,		Change	
	<u>2021</u>	<u>2020</u>	<u>Dollars</u>	<u>%</u>
	(in thousands)			
Net revenues				
Finished pharmaceutical products	\$ 301,594	\$ 243,568	\$ 58,026	24 %
API	15,287	10,357	4,930	48 %
Total net revenues	<u>\$ 316,881</u>	<u>\$ 253,925</u>	<u>\$ 62,956</u>	<u>25 %</u>
Cost of revenues				
Finished pharmaceutical products	\$ 152,092	\$ 129,775	\$ 22,317	17 %
API	21,284	17,642	3,642	21 %
Total cost of revenues	<u>\$ 173,376</u>	<u>\$ 147,417</u>	<u>\$ 25,959</u>	<u>18 %</u>
Gross profit	<u>\$ 143,505</u>	<u>\$ 106,508</u>	<u>\$ 36,997</u>	<u>35 %</u>
<i>as % of net revenues</i>	<i>45 %</i>	<i>42 %</i>		

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The increase in net revenues of the finished pharmaceutical products for the nine months ended September 30, 2021, was due to the following changes:

	Nine Months Ended September 30,		Change	
	2021	2020 (in thousands)	Dollars	%
Finished pharmaceutical products net revenues				
Primatene Mist®	\$ 51,624	\$ 38,333	\$ 13,291	35 %
Epinephrine	38,662	16,317	22,345	137 %
Lidocaine	32,314	28,922	3,392	12 %
Glucagon	32,304	—	32,304	N/A
Phytonadione	31,577	32,188	(611)	(2)%
Enoxaparin	28,020	31,033	(3,013)	(10)%
Naloxone	20,994	26,337	(5,343)	(20)%
Other finished pharmaceutical products	66,099	70,438	(4,339)	(6)%
Total finished pharmaceutical products net revenues	\$ 301,594	\$ 243,568	\$ 58,026	24 %

We launched glucagon for injection emergency kit, 1mg in the first quarter of 2021. The continued growth in sales of Primatene Mist® was due to increased unit volumes, which was primarily a result of the continued success of our advertising campaign. The increase in sales of epinephrine was primarily due to the launch of our epinephrine injection, USP 30mg/30mL multiple dose vial product in the second quarter of 2020, as well as an increase in unit volumes, as a result of higher demand due to a market shortage for pre-filled syringes. The increase in sales of lidocaine was primarily due to an increase in unit volumes, as a result of a market shortage. The decrease in sales of phytonadione was primarily due to lower unit volumes as a result of decreased market demand, which was partially offset by higher average selling price. Sales of enoxaparin decreased \$3.0 million due to lower average selling price as a competitor re-entered the market during the second quarter of 2021. The decrease in sales of Naloxone was primarily due a decrease in unit volumes as well as lower average selling price as a result of a competitor entering the market. The decrease in other finished pharmaceutical products was primarily due to lower unit volumes as a result of competitors returning to their normal distribution levels during the year after being unable to supply market demands in 2020.

We anticipate that sales of naloxone and enoxaparin will continue to fluctuate in the future as a result of changing levels of competition.

Sales of API primarily depend on the timing of customer purchases. In May 2021, we amended the Supply Agreement with MannKind Corporation, or MannKind, whereby MannKind's aggregate total commitment of RHI API under the Supply Agreement was modified and extended for an additional year through 2027, which timeframe would have previously lapsed after calendar year 2026. MannKind has agreed to pay us an amendment fee of \$2.0 million. We received the first payment of the amendment fee of \$1.0 million in June 2021 and recognized \$0.8 million in net revenues during the nine months ended September 30, 2021. The remaining \$0.2 million is recorded as a contract liability in our condensed consolidated balance sheet as of September 30, 2021 and will be recognized to net revenues in the fourth quarter of 2021. The remaining \$1.0 million of the amendment fee is due January 2022 and relates to the amendments to the 2022 supply level and will be recognized ratably to net revenues in 2022.

We anticipate that sales of API will continue to fluctuate and may decrease due to the inherent uncertainties related to sales to MannKind Corporation pursuant to our supply agreement with them. In addition, most of our API sales are denominated in euros, and the fluctuation in the value of euros versus the U.S. dollar has had, and will continue to have, an impact on API sales revenues in the near term.

A significant portion of our customer shipments in any period relate to orders received and shipped in the same period, generally resulting in low product backlog relative to total shipments at any time. However, during the third quarter of 2021, we experienced a backlog of approximately \$12 million for various products, including glucagon, epinephrine and phytonadione because of the higher than anticipated demand for these products, partially brought on by competitor shortages. We are working to resolve this issue prior to year-end and believe that we will be able to reduce the backlog in

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the near future. Historically, our backlog has not been a meaningful indicator in any given period of our ability to achieve any particular level of overall revenue or financial performance.

Gross margins

The increase in sales of Primatene Mist®, the launch of glucagon for injection emergency kit during the first quarter of 2021, as well as the launch of our epinephrine injection multiple dose vial in the second quarter of 2020, which are higher-margin products, helped increase our gross margins for the nine months ended September 30, 2021. These increases in gross margins were partially offset by lower pricing and increased costs for enoxaparin, particularly the cost for heparin raw material, which is used as the starting material for enoxaparin.

The cost of heparin may increase further, putting downward pressure on our gross margins. However, we believe that this trend will be offset by increased sales of our higher-margin products, including Primatene Mist®, epinephrine multi-dose vials, and glucagon. Additionally, we have not seen significant supply disruptions due to the COVID-19 pandemic at this time, but we are continuing to monitor our supply chain for any potential problems.

Selling, distribution and marketing, and general and administrative

	Nine Months Ended September 30,		Change	
	2021	2020 (in thousands)	Dollars	%
Selling, distribution, and marketing	\$ 13,411	\$ 10,993	\$ 2,418	22 %
General and administrative	\$ 40,813	\$ 38,344	\$ 2,469	6 %

The increase in selling, distribution, and marketing expenses was primarily due to marketing and distribution expenses related to Primatene Mist®, including the cost of creating a new commercial for our national digital, television and radio marketing campaign. The increase in general and administrative expense was primarily due to an increase in legal expenses (see note 20 to the condensed consolidated financial statements for more information regarding litigation matters).

We expect that selling, distribution and marketing expenses will increase due to the increase in marketing expenditures for Primatene Mist®. Legal fees may fluctuate from period to period due to the timing of patent challenges and other litigation matters.

Research and development

	Nine Months Ended September 30,		Change	
	2021	2020 (in thousands)	Dollars	%
Salaries and personnel-related expenses	\$ 20,538	\$ 19,676	\$ 862	4 %
Clinical trials	2,575	6,428	(3,853)	(60)%
FDA fees	189	133	56	42 %
Testing, operating and lab supplies	5,816	9,375	(3,559)	(38)%
Depreciation	8,439	7,397	1,042	14 %
Other expenses	6,089	6,087	2	0 %
Total research and development expenses	<u>\$ 43,646</u>	<u>\$ 49,096</u>	<u>\$ (5,450)</u>	<u>(11)%</u>

The decrease in research and development expenses is primarily due to a decrease in clinical trial expense as a result of the completion of one of our clinical trial studies at the end of 2020 and delays in other studies. Additionally, the restructuring of ANP and the deconsolidation of Hanxin and its subsidiaries resulted in a decrease in our testing, operating and lab supplies expenses.

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Research and development costs consist primarily of costs associated with the research and development of our product candidates including the cost of developing APIs. We expense research and development costs as incurred.

We have made, and expect to continue to make, substantial investments in research and development to expand our product portfolio and grow our business. We expect that research and development expenses will increase on an annual basis due to increased clinical trial costs related to our biosimilar and inhalation product candidates. These expenditures will include costs of APIs developed internally as well as APIs purchased externally, the cost of purchasing reference listed drugs and the costs of performing the clinical trials. As we undertake new and challenging research and development projects, we anticipate that the associated costs will increase significantly over the next several quarters and years. Over the past year, some of our ongoing clinical trials experienced short term interruptions in the recruitment of patients due to the COVID-19 pandemic, as hospitals prioritized their resources towards the COVID-19 pandemic and government imposed travel restrictions. These conditions may in turn delay spending and the results of these trials. Additionally, some clinical trials experienced increased expenses due to new protocols to protect participants from COVID-19.

Other income, net

	Nine Months Ended September 30,		Change	
	2021	2020	Dollars	%
	(in thousands)			
Other income, net	\$ 11,615	\$ 3,078	\$ 8,537	277 %

During the third quarter of 2021, we completed the restructuring of ANP, whereby our ownership interest in ANP increased to 100% and ANP's ownership interest in Hanxin and its subsidiaries was reduced to approximately 14%. As a result of the loss in control over Hanxin, we deconsolidated Hanxin and recorded a \$13.6 million gain on deconsolidation. For more information regarding our ANP restructuring, see Note 3 to the condensed consolidated financial statements.

Income tax provision

	Nine Months Ended September 30,		Change	
	2021	2020	Dollars	%
	(in thousands)			
Income tax provision	\$ 13,436	\$ 4,490	\$ 8,946	NM
Effective tax rate	24 %	39 %		

Our effective tax rate for the nine months ended September 30, 2021 decreased in comparison to the nine months ended September 30, 2020, primarily due to differences in pre-tax income positions and timing of discrete tax items.

Liquidity and Capital Resources

Cash Requirements and Sources

We need capital resources to maintain and expand our business. We expect our cash requirements to increase significantly in the foreseeable future as we sponsor clinical trials for, seek regulatory approvals of, and develop, manufacture and market our current development-stage product candidates and pursue strategic acquisitions of businesses or assets. Our future capital expenditures include projects to upgrade, expand, and improve our manufacturing facilities in the United States, China, and France. Our cash obligations include the principal and interest payments due on our existing loans and lease payments, as described below and throughout this Quarterly Report.

As of September 30, 2021, our foreign subsidiaries collectively held \$13.5 million in cash and cash equivalents. Cash or cash equivalents held at foreign subsidiaries are not available to fund the parent company's operations in the United States. We believe that our cash reserves, operating cash flows, and borrowing availability under our credit facilities will

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be sufficient to fund our operations for at least the next 12 months from the date of filing of this Quarterly Report on Form 10-Q. We expect additional cash flows to be generated in the longer term from future product introductions, although there can be no assurance as to the receipt of regulatory approval for any product candidates that we are developing or the timing of any product introductions, which could be lengthy or ultimately unsuccessful.

We maintain a shelf registration statement on Form S-3 pursuant to which we may, from time to time, sell up to an aggregate of \$250 million of our common stock, preferred stock, debt securities, depositary shares, warrants, subscription rights, purchase contracts, or units. If we require or elect to seek additional capital through debt or equity financing in the future, we may not be able to raise capital on terms acceptable to us or at all. To the extent we raise additional capital through the sale of equity or convertible debt securities, the issuance of such securities will result in dilution to our stockholders. If we are required and unable to raise additional capital when desired, our business, operating results and financial condition may be adversely affected.

Working capital increased by \$38.2 million to \$205.7 million at September 30, 2021, compared to \$167.5 million at December 31, 2020.

Cash Flows from Operations

The following table summarizes our cash flows used in operating, investing, and financing activities for the nine months ended September 30, 2021 and 2020:

	Nine Months Ended September 30, 2021 2020	
	(in thousands)	
Statement of Cash Flow Data:		
Net cash provided by (used in)		
Operating activities	\$ 57,553	\$ 40,373
Investing activities	(16,718)	(24,239)
Financing activities	(28,322)	(2,019)
Effect of exchange rate changes on cash	(175)	110
Net increase in cash, cash equivalents, and restricted cash	<u>\$ 12,338</u>	<u>\$ 14,225</u>

Sources and Use of Cash

Operating Activities

Net cash provided by operating activities was \$57.6 million for the nine months ended September 30, 2021, which included net income of \$43.5 million. Non-cash items comprised primarily of \$17.7 million of depreciation and amortization, \$14.8 million of share-based compensation expense and a \$13.6 million gain relating to the deconsolidation of Hanxin and its subsidiaries as result of the ANP restructuring during the third quarter of 2021.

Additionally, for the nine months ended September 30, 2021, there was a net cash outflow from changes in operating assets and liabilities of \$12.9 million, which resulted from an increase in accounts receivable as well as an increase in inventories, which was partially offset by an increase in accounts payable and accrued liabilities. Accounts payable and accrued liabilities increased primarily due to the timing of payments. The increase in accounts receivable was due to both increases in sales and the timing of sales.

Net cash provided by operating activities was \$40.4 million for the nine months ended September 30, 2020, which included net income of \$6.9 million. Non-cash items were primarily comprised of \$15.7 million of depreciation and amortization, and \$16.2 million of share-based compensation expense. Additionally, for the nine months ended September 30, 2020, there was a net cash outflow from changes in operating assets and liabilities of \$4.9 million, which resulted from an increase in accounts receivable, which was partially offset by a decrease in inventory, as well as an increase in accounts payable and accrued liabilities. The increase in accounts receivable was due to the timing of sales. Accounts payable and accrued liabilities increased primarily due to the timing of payments.

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Investing Activities

Net cash used in investing activities was \$16.7 million for the nine months ended September 30, 2021, primarily as a result of \$20.6 million in purchases of property, plant, and equipment, which included \$11.0 million incurred in the United States, \$0.6 million in France, and \$9.0 million in China, offset by, increase in cash of \$5.0 million relating to short-term investment activities.

Net cash used in investing activities was \$24.2 million for the nine months ended September 30, 2020, primarily as a result of \$24.5 million in purchases of property, plant, and equipment, which included \$5.9 million incurred in the United States, \$2.7 million in France, and \$15.9 million in China.

Financing Activities

Net cash used in financing activities was \$28.3 million for the nine months ended September 30, 2021, primarily as a result of \$54.0 million in payments relating to the purchase of additional ANP ownership interest in connection with the ANP restructuring completed during the third quarter of 2021 (see Note 3 to the condensed consolidated financial statements). We borrowed \$70.0 million in connection with a credit agreement with Capital One N.A., which was partially offset by \$37.3 million in principle payments of our long-term debt and lines of credit. We used \$15.4 million to purchase treasury stock and received \$10.3 million in net proceeds from the settlement of share-based compensation awards under our equity plans.

Net cash used in financing activities was \$2.0 million for the nine months ended September 30, 2020, primarily as a result of \$21.0 million used to purchase treasury stock offset by \$21.3 million in net proceeds from the settlement of share-based compensation awards under our equity plans. Additionally, we also made \$6.3 million in principal payments on our long-term debt and received \$4.1 million from borrowings on our lines of credit, of which \$3.1 million was converted into an equipment loan during the year.

Indebtedness

For more information regarding our outstanding indebtedness, see “Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Debt”.

Contractual Obligations

There have been no material changes outside the ordinary course of our business in the contractual obligations disclosed in our Annual Report on Form 10-K for the year ended December 31, 2020, except that our outstanding debt obligations have changed as follows:

	<u>September 30,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>	<u>Change</u>
		(in thousands)	
Short-term debt and current portion of long-term debt	\$ 2,256	\$ 12,263	\$ (10,007)
Long-term debt	75,552	34,186	41,366
Total debt	<u>\$ 77,808</u>	<u>\$ 46,449</u>	<u>\$ 31,359</u>

As of September 30, 2021, we had \$84.6 million in unused borrowing capacity under revolving lines of credit with Capital One N.A. and China Merchant Bank.

Critical Accounting Policies

The preparation of our condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and the notes to the financial statements. Some of those judgments can be subjective and complex, and therefore, actual results could differ materially

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from those estimates under different assumptions or conditions. A summary of our critical accounting policies is presented in Part II, Item 7, of our Annual Report on Form 10-K for the year ended December 31, 2020.

Recent Accounting Pronouncements

For information regarding recent accounting pronouncements, see “Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Summary of Significant Accounting Policies”.

Off-Balance Sheet Arrangements

We do not have any relationships or financial partnerships with unconsolidated entities, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts.

Government Regulation

Our products and facilities are subject to regulation by a number of federal and state governmental agencies. The FDA, in particular, maintains oversight of the formulation, manufacture, distribution, packaging, and labeling of all of our products. The Drug Enforcement Administration, or DEA, maintains oversight over our products that are considered controlled substances.

From June 14 through June 22, 2021, our Amphastar facility in Rancho Cucamonga, California was subject to a pre-approval inspection by the FDA. The inspection included a review of our corrective actions taken from the previous cGMP inspection in February 2019, as well as review of data to support our pending applications. The inspections resulted in multiple observations on Form 483. We fully responded to those observations on July 14, 2021. We believe that our responses to the observations will satisfy the requirements of the FDA and that no significant further actions will be necessary.

From July 12 through July 16, 2021, our IMS facility in South El Monte, California was subject to a post-approval inspection by the FDA. The inspection included a review progress and updates since the October 2019 pre-approval inspection. The inspection resulted in no Form 483 findings. No further actions will be necessary.

From July 12 through July 14, 2021, our Armstrong facility in Canton, Massachusetts was subject to a routine inspection by the FDA. The inspection included a review of compliance with FDA regulations relating to Good Manufacturing Practices. The inspection resulted in no Form 483 findings. No further actions will be necessary.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

Except for the broad, ongoing effects of the COVID-19 pandemic as a result of its negative impact on the global economy and financial markets, there have been no material changes in market risk from the information provided in our Annual Report on Form 10-K for the year ended December 31, 2020. We are exposed to market risk in the ordinary course of business. Market risk represents the potential loss arising from adverse changes in the value of financial instruments. The risk of loss is assessed based on the likelihood of adverse changes in fair values, cash flows or future earnings. We are exposed to market risk for changes in the market values of our investments (Investment Risk), the impact of interest rate changes (Interest Rate Risk), and the impact of foreign currency exchange changes (Foreign Currency Exchange Risk).

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, under the supervision and with the participation of our Chief Executive Officer and our Chief Financial Officer, our principal executive and principal financial officers, respectively, conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934, as amended, as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that as of such date, our disclosure controls and procedures were effective (a) to ensure that information that we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and (b) to include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in reports filed or submitted under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2021, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act).

Inherent Limitations of Internal Controls

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

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

For information regarding legal proceedings, see “Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Litigation”.

ITEM 1A. RISK FACTORS

Except as noted below, there were no material changes from the risk factors previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2020, filed with the Securities and Exchange Commission on March 15, 2021.

Our business may be adversely affected by the ongoing COVID-19 pandemic or other epidemics.

The ongoing COVID-19 pandemic, including the recent Delta variant, has continued to impact worldwide economic activity and financial markets. While three vaccines have received Emergency Use Authorization from the FDA, the COVID-19 pandemic remains a challenge to our business until it is abated. Mass and rapid production of the vaccines, for example, has placed increased pressure on the availability of supplies that are also used in our products, such as glass vials and needles. The COVID-19 pandemic is imposing additional burdens on our business to comply with regulations imposed by the State of California. The COVID-19 pandemic may also disrupt the operations of our customers, suppliers and partners for an indefinite period of time, including as a result of travel restrictions and/or business shutdowns, all of which could negatively impact our business and results of operations, including cash flows. Disruptions to our manufacturing partners and suppliers could result in disruption to the production of our products and failure to satisfy demand. More generally, the outbreak of COVID-19 could adversely affect economies and financial markets globally and nationally, potentially leading to an economic downturn, which could decrease spending and adversely affect demand for our products and harm our business and results of operations. Even after the COVID-19 pandemic has subsided, we may continue to experience an adverse impact to our business as a result of its global economic impact, including any recession that has occurred or may occur in the future. Specifically, difficult macroeconomic conditions, increased and prolonged unemployment or a decline in business confidence as a result of the COVID-19 pandemic, could have a continuing adverse effect on the demand for some of our products. The degree of impact of the COVID-19 pandemic on our business will depend on several factors, such as the duration and the extent of the pandemic, as well as actions taken by governments, businesses, and consumers in response to the pandemic, all of which continue to evolve and remain uncertain at this time.

As a result of the consequences of the COVID-19 pandemic, FDA has issued various COVID-19 related guidance documents applicable to biopharmaceutical manufacturers and clinical trial sponsors. For example, in March 2020, the FDA issued a guidance, which the FDA subsequently updated, on conducting clinical trials during the pandemic, which describes a number of considerations for sponsors of clinical trials impacted by the pandemic, including the requirement to include in the clinical trial report contingency measures implemented to manage the clinical trial, among others. The FDA also issued a guidance on good manufacturing practice considerations for responding to COVID-19 infection in employees in drug products manufacturing, and a guidance on review timelines for applicant responses to Complete Response Letters when a facility assessment is needed during the COVID-19 public health emergency. These and future guidance documents and regulatory requirements, including future legislation, may require us to develop and implement new policies and procedures, make significant adjustments to our clinical trials, or increase the amount time and resources needed for regulatory compliance, which may impact our clinical development plans and timelines.

Some of our ongoing clinical trials have experienced short term interruptions in the recruitment of patients due to the COVID-19 pandemic, as hospitals prioritize their resources toward the COVID-19 pandemic and governments impose travel restrictions. Additionally, protocols at certain clinical sites have changed which could slow down the pace of clinical trials while also increasing their cost. These conditions may in turn delay spending and delay the results of these trials. Additionally, certain suppliers have delayed shipments to us in 2020 and 2021. These delays may have been caused by manufacturing disruptions due to the COVID-19 pandemic. None of these delays caused delays in our

manufacturing to date, but future delays could cause manufacturing disruptions at our factories and could also cause lost sales.

It is not possible at this time to estimate the complete impact that the COVID-19 pandemic could have on our business, as the impact will depend on future developments, which are highly uncertain and cannot be predicted. Infections may resurge or become more widespread and the limitation on our ability to travel and timely sell and distribute our products, as well as any closures or supply disruptions, may be extended for longer periods of time, all of which would have a negative impact on our business, financial condition and operating results. We will continue to monitor the impact of the COVID-19 pandemic on all aspects of our business.

Because a portion of our manufacturing takes place in China, a significant disruption in the construction or operation of our manufacturing facility in China, political unrest in China, tariffs, impact of outbreaks of health epidemics, such as the COVID-19 pandemic, or changes in social, political, trade, health, economic, environmental, or climate-related conditions or in laws, regulations and policies governing foreign trade could materially and adversely affect our business, financial condition and results of operations.

We currently manufacture the starting material for Amphadase[®] and enoxaparin as well as the APIs for isoproterenol and nitroprusside at our manufacturing facility in China, and we plan to use this facility to manufacture several of the APIs for products in our pipeline. Additionally, we intend to continue to invest in the expansion of this manufacturing facility. Our manufacturing facility and operations in China involve significant risks, including:

- disruptions in the construction of the manufacturing facility;
- interruptions to our operations in China or the inability of our manufacturing facility to produce adequate quantities of raw materials or APIs to meet our needs as a result of natural catastrophic events or other causes beyond our control such as power disruptions or widespread disease outbreaks, including the recent outbreaks that impact animal-derived products, such as the importation of pig-derived crude heparin from countries impacted by the African swine flu, and outbreak of the COVID-19 pandemic, which has resulted in and may in the future result in, business closures, transportation restrictions, import and export complications, and otherwise cause shortages in the supply of raw materials or cause disruptions in our manufacturing capability;
- product supply disruptions and increased costs as a result of heightened exposure to changes in the policies of the Chinese government, political unrest or unstable economic conditions in China;
- the imposition of tariffs or other trade barriers as a result of changes in social, political, and economic conditions or in laws, regulations, and policies governing foreign trade, including the tariffs previously implemented and additional tariffs that have been proposed by the U.S. government on various imports from China and by the Chinese government on certain U.S. goods, the scope and duration of which, if implemented, remain uncertain;
- the nationalization or other expropriation of private enterprises or intellectual property by the Chinese government, which could result in the total loss of our investment in China; and
- interruptions to our manufacturing or business operations resulting from geo-political actions, including war and terrorism, natural disasters including earthquakes, typhoons, floods, and fires, or outbreaks of health epidemics such as coronavirus, or outbreaks in livestock or animals that impact or restrict importation, use, or distribution of animal-derived products.

Any of these matters could materially and adversely affect our business and results of operations. These interruptions or failures could impair our ability to operate our business, impede the commercialization of our product candidates or delay the introduction of new products, impact our product quality, or impair our competitive position.

We are actively monitoring and assessing the potential impact of the COVID-19 pandemic. This includes evaluating the impact on our employees, suppliers, and logistics providers as well as evaluating governmental actions being taken to curtail the spread of the virus. While the Chinese government has been relaxing work restrictions, at this time, it is

unclear if the Chinese government will reinstate restrictions or if further restrictions will be put into place by the government. In addition, many countries have placed significant bans on travel to and from China, with many countries and airlines suspending flights to and from mainland China. Any material adverse effect on our employees, suppliers, and logistics providers could have a material adverse effect on our manufacturing operations in China or the supply of raw materials or APIs originating from China.

Our epinephrine prefilled syringe product is marketed without FDA approval and may be subject to enforcement actions by the FDA.

Our epinephrine prefilled syringe prescription product is marketed without FDA approval. This products, like many other prescription drugs on the market that have not been formally evaluated as being effective by the FDA, contain active ingredients that were first marketed prior to the enactment of the Federal Food, Drug, and Cosmetic Act, or FDCA. The FDA has assessed this product in a program known as the “Prescription Drug Wrap-Up” and has stated that this drug cannot be lawfully marketed unless they comply with certain “grandfather” exceptions to the definition of “new drug” in the FDCA. These exceptions have been strictly construed by FDA and by the courts, and the FDA has stated that it is unlikely that any of the unapproved prescription drugs on the market, including our drug, qualify for the exceptions. At any time, the FDA may require that our unapproved prescription drug be submitted for approval and may direct us to recall this product and/or cease marketing the product until they are approved. The FDA may also take enforcement actions based on our marketing of this unapproved product, including but not limited to the issuance of an untitled letter or a warning letter, judicial action seeking an injunction, product seizure and/or civil or criminal penalties. The enforcement posture could change at any time and our ability to market such drugs could terminate with little or no notice. Moreover, if our competitors seek and obtain approval and market FDA-approved prescription products that compete against our unapproved prescription product, we would be subject to a higher likelihood that the FDA may seek to take action against our unapproved product. Such competitors have brought and may bring claims against us alleging unfair competition or related claims.

As a result of our meetings with the FDA in 2009, we decided to discontinue all of our products that were subject to the Prescription Drug Wrap-Up program, with the exception of epinephrine in vial form. These products were all produced at our subsidiary, IMS. During the third quarter of 2010, the FDA requested that we reintroduce several of the withdrawn products to help address a national drug shortage, while we prepared and filed applications for approval of the products. Between August and October 2010, we reintroduced our epinephrine prefilled syringes.

In February 2017, the FDA requested that we discontinue the manufacturing and distribution of our epinephrine injection, USP vial product, which had been marketed under the “grandfather” exception to the “FDA’s Prescription Drug Wrap-Up program”. We discontinued selling this product in the second quarter of 2017. In April 2020, the FDA granted approval of our Epinephrine Injection, USP 30mg/mL Multiple Dose Vial, and launched the product in May 2020.

The FDA granted approval of our Atropine Sulfate Injection 0.1mg/mL in the 10mL Luer-Jet® Prefilled Syringe in October 2020, our Dextrose Injection 50% in the 50mL Luer-Jet® Prefilled Syringe in March 2021 and our Morphine Sulfate Injection USP, 1mg/mL 30mL in April 2021.

Our only unapproved product currently on the market is epinephrine prefilled syringes. For the years ended December 31, 2020, 2019, and 2018, we recorded net revenues of \$13.2 million, \$13.9 million, and \$10.1 million, respectively, for epinephrine prefilled syringes and for the nine months ended September 30, 2021 and 2020, we recorded net revenues of \$19.3 million and \$10.9 million, respectively, for this product. We have filed an NDA with respect to our remaining unapproved product in order to mitigate all risk associated with the marketing of unapproved drug products. Prior to the approval of our NDA submission, we continue to operate in compliance with the FDA Compliance Policy Guide, CPG Sec. 440.100 Marketed New Drugs Without Approved NDAs and ANDAs.

Our business and operations have been impacted in the past, and may be impacted in the future, in the event of system breach or failure.

We, our collaborators, third-party providers, distributors, customers and other contractors utilize information technology systems and networks, including internet-based systems, to transmit, store and otherwise process electronic data in connection with our business activities, including our supply chain processes, operations and communications. This includes our clinical data and business proprietary information, Electronic Data Interchange, or EDI, on purchase orders, invoices, chargebacks, etc. We, and others on our behalf, also collect, transmit, store and otherwise process certain data relating to individuals, including about our personnel, business partners, and others, which may be subject to applicable data protection laws and regulations that require adoption of minimum information security standards. The cost of compliance with applicable data protection laws and regulations have increased and may increase in the future.

Despite our implementation of security measures to protect the confidentiality, integrity, and availability of the systems and data within our control from various threats (e.g., cyber-attack, insider threat, accidental disclosure, intellectual property theft and economic espionage, exploitable defects or bugs in our third-party providers' systems, natural disaster, war, terrorism, telecommunications and electrical outage), risks remain, and our systems and networks and the systems and networks of third parties that support us and our services may be breached or disrupted due to these threats. Techniques used to sabotage or obtain unauthorized access to systems and networks are constantly evolving and, in some instances, are not identified until or after they are launched against a target. We and our third-party providers may be unable to anticipate these techniques, discover threats and react in a timely manner, or implement adequate preventative or mitigating measures. Further, system breaches, malware, ransomware, computer hacking, and insider threats have become more prevalent, and experts have warned that the COVID-19 pandemic has resulted in increased threats and malicious activity.

Potential legal (regulatory or contractual), financial, operational, and reputational harm may arise from the accidental or unlawful destruction, damage, loss, unavailability, alteration, impairment, misuse, unauthorized disclosure of, or unauthorized access to (i) our data, which is transmitted, stored or otherwise processed by us or by collaborators, third-party providers, distributors and other contractors on our behalf (a "data security incident"); and (ii) the systems upon which we rely for our operations (an "other event"). For example:

- The accidental or unlawful loss, unavailability or alteration of clinical trial data from completed or ongoing clinical trials for any of our product candidates could affect our ability to operate, result in delays in our development and regulatory approval efforts, and significantly increase our costs to recover or reproduce the data.
- The size and complexity of our systems may make them potentially vulnerable to breakdown or interruption, whether due to computer viruses or other causes, which may result in the loss of key information or the impairment of production and other supply chain processes, adversely affecting our business.
- Any data security incident or other event, either on its own or as a pattern, may require costly response and remediation efforts, trigger notification obligations under breach notification laws, result in litigation or adverse regulatory action arising from or related to such an incident or event, damage our reputation, and result in significant additional expense to implement further data protection measures. Integrating the systems and data of any acquired entity may increase these risks due to unforeseen threats and vulnerabilities.
- Similarly, any data security incident or other event experienced by our collaborators, third-party providers, distributors and other contractors may hinder our product development, supply chain, other business operations, or our regulatory and contractual obligations to others and could also give rise to litigation or adverse regulatory action.

We have experienced and may continue to experience cyberattacks of varying degrees from time to time. In the second quarter of 2020, we were subject to a cyber-event that resulted in a temporary disruption to some of our internal computer systems. The breach was not materially disruptive to the business. In response to this incident, we engaged a third-party forensic expert to investigate, and determined that cyber criminals illegally obtained certain personal information of certain current and former employees. We notified affected individuals and regulators, as we deemed was

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required or appropriate. We have incurred costs to respond to this incident, but we did not incur any penalties or settlements as a result of this event. We will continue to incur costs to support our efforts to enhance our security measures.

To enhance oversight of cyber issues, management now updates the Board of Directors on cyber security matters on a quarterly basis, and the Board of Directors has assigned oversight of cyber security to the Audit Committee. Additionally, the Company implemented a security training and compliance program, which employees, with access to information technology, must complete annually or more often if new issues arise.

There can be no assurance that we will be successful in preventing data security incidents or other events nor that we will be successful in mitigating their effects, despite the implementation of security measures for systems and data within our control. Similarly, there can be no assurance that our collaborators, third-party providers, distributors and other contractors will be successful in protecting our data on their systems or in protecting other systems upon which we may rely. Furthermore, breach notification laws are not consistent among jurisdictions, and compliance and other measures in the event of a widespread data security incident could result in a substantial cost and diversion of resources, distract management and technical personnel. Any such data security incident or other event could have a material adverse effect on our business and prospects.

Although we maintain cyber insurance coverage that may cover certain of our losses in connection with a security breach or other security incident, we cannot be certain our insurance coverage will be adequate for losses actually incurred, that insurance will continue to be available to us on commercially reasonable terms (if at all) or that any insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, or denials of coverage, could have a material adverse effect on our business, including our financial condition, results of operations and reputation.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

(c) Issuer Purchases of Equity Securities

The table below provides information with respect to repurchases of our common stock:

Period	Total Number of Shares Purchased ⁽¹⁾	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
July 1 – July 31, 2021	53,201	\$ 20.30	53,201	—
August 1 – August 31, 2021	88,568	19.62	88,568	—
September 1 – September 30, 2021	175,443	18.64	175,443	—

⁽¹⁾ During the third quarter of 2021, we repurchased shares of our common stock as part of the share buyback program authorized by our Board of Directors on August 4, 2020. In August 2021, our Board of Directors authorized an increase of \$20.0 million to the share buyback program. As of September 30, 2021, \$21.9 million remained available under such program.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

Not applicable.

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ITEM 6. EXHIBITS

Exhibit No.	Description
10.1	Credit Agreement dated August 4, 2021, between Amphastar Pharmaceuticals, Inc. and Capital One N.A. in the original sum of \$140,000,000.
10.2*	Share Purchase Agreement by and between Amphastar Pharmaceuticals, Inc. and Nanjing Quanqia Enterprise Management Consulting, LLP, dated August 19, 2021.
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1#	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2#	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document - The instance document does not appear in the interactive data file because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definitions Linkbase Document
104	Cover Page Interactive File (Formatted as Inline XBRL and contained in Exhibit 101)

The information in Exhibits 32.1 and 32.2 shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act (including this Report), unless the Registrant specifically incorporates the foregoing information into those documents by reference.

* Certain confidential information contained in this Exhibit was omitted by means of marking such portions with brackets because the identified confidential information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

SIGNATURES

Pursuant to the requirements 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.

AMPHASTAR PHARMACEUTICALS, INC.

(Registrant)

By: /s/ JACK Y. ZHANG
 Jack Y. Zhang
 Chief Executive Officer
 (Principal Executive Officer)

Date: November 9, 2021

AMPHASTAR PHARMACEUTICALS, INC.

(Registrant)

By: /s/ WILLIAM J. PETERS
 William J. Peters
 Chief Financial Officer
 (Principal Financial and Accounting Officer)

Date: November 9, 2021

\$140,000,000 CREDIT FACILITY

CREDIT AGREEMENT

Dated as of August 4, 2021

by and among

**AMPHASTAR PHARMACEUTICALS, INC.,
TOGETHER WITH THE OTHER PERSONS
THAT ARE NOW OR FROM TIME TO TIME
BECOME BORROWERS HEREUNDER, as Borrowers,**

**THE OTHER PERSONS PARTY HERETO
DESIGNATED FROM TIME TO TIME AS CREDIT PARTIES,**

**CAPITAL ONE, NATIONAL ASSOCIATION,
for itself, as a Lender and Swing Lender and as Agent for all Lenders,**

THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO

as Lenders,

and

**CAPITAL ONE, NATIONAL ASSOCIATION and EAST WEST BANK,
as Joint Lead Arrangers and Bookrunners**

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EXHIBITS

Exhibit 1.1(a)	Form of Assignment
Exhibit 1.1(b)	Form of Notice of Borrowing
Exhibit 1.1(c)	Form of Note
Exhibit 2.1(c)	Form of L/C Request
Exhibit 2.1(d)	Form of Swing Loan Request
Exhibit 2.6	Form of Notice of Conversion/Continuation
Exhibit 3.1	Closing Checklist
Exhibit 5.2(b)	Form of Compliance Certificate

CREDIT AGREEMENT

This CREDIT AGREEMENT (including all exhibits and schedules hereto, as the same may be amended, modified and/or restated from time to time, this “**Agreement**”) is entered into as of August 4, 2021, by and among Amphastar Pharmaceuticals, Inc., a Delaware corporation (“**Amphastar**”; together with each other entity that from time to time becomes a borrower under this Agreement in accordance with the terms hereof, collectively, the “**Borrowers**” and individually a “**Borrower**”), the other Persons party hereto that are designated as a “**Credit Party**”, Capital One, National Association, a national banking association (in its individual capacity, “**Capital One**”) as Agent for the several financial institutions from time to time party to this Agreement (collectively, the “**Lenders**” and individually each a “**Lender**”) and for itself as a Lender (including as Swing Lender) and such Lenders.

W I T N E S E T H:

WHEREAS, the Borrowers have requested, and the Lenders have agreed to make available to the Borrowers, a revolving credit facility (including a letter of credit subfacility) and a term loan upon and subject to the terms and conditions set forth in this Agreement for the uses of proceeds described in Section 5.10;

WHEREAS, the Credit Parties desire to secure all of their Obligations under the Loan Documents by granting to Agent, for the benefit of the Secured Parties, a security interest in and lien upon substantially all of their Property (other than Excluded Property), including the Stock of all Borrowers (excluding Amphastar) and certain Subsidiaries of the Borrowers;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Defined Terms. The following terms have the following meanings:

“**Acquisition**” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the Stock of any Person or otherwise causing any Person to become a Subsidiary of a Borrower, or (c) a merger or consolidation or any other combination with another Person.

“**Acquisition Consideration**” as defined in the definition of Permitted Acquisition.

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

“**Affected Lender**” as defined in Section 10.20.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person; provided, however, that no Secured Party shall be an Affiliate of any Credit Party or of any Subsidiary of any Credit Party solely by reason of the provisions of the Loan Documents. For purposes of this definition, “control” means the possession of the

power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agent**” means Capital One, National Association, in its capacity as administrative agent for the Lenders hereunder, and any successor administrative agent.

“**Agent Fee Letter**” as defined in Section 2.9(a).

“**Aggregate Excess Funding Amount**” as defined in Section 2.11(e)(iv).

“**Aggregate Revolving Loan Commitment**” means the combined Revolving Loan Commitments of the Lenders, which shall initially be in the amount of \$70,000,000, as such amount may be adjusted as permitted by this Agreement.

“**Aggregate Term Loan Commitment**” means the combined Term Loan Commitments of the Lenders, which shall initially be in the amount of \$70,000,000, as such amount may be adjusted as permitted by this Agreement.

“**Agreement**” as defined in the preamble hereto.

“**Anti-Corruption Laws**” as defined in Section 4.22(c).

“**Anti-Money Laundering Laws**” as defined in Section 4.22(b).

“**Applicable Margin**” means:

(a) for the period commencing on the Closing Date through the last day of the calendar month (the “**First Grid Calculation Date**”) during which financial statements for the fiscal year ending on December 31, 2021 and a Compliance Certificate calculating the Consolidated Total Net Leverage Ratio have been delivered in accordance with the terms of Section 5.1(a) and Section 5.2(b) herein, respectively: (i) if a Base Rate Loan, three-fourths of one percent (0.75%) per annum and (ii) if a LIBOR Rate Loan, one and three-fourths percent (1.75%) per annum;

(b) thereafter, the Applicable Margin shall equal the applicable LIBOR Margin or Base Rate Margin in effect from time to time determined as set forth below based upon the applicable Consolidated Total Net Leverage Ratio then in effect pursuant to the appropriate column under the table below:

Revolving Loans, Swing Loans and Term Loans

<u>Consolidated Total Net Leverage Ratio</u>	<u>LIBOR Margin</u>	<u>Base Rate Margin</u>	<u>Unused Commitment Fee Percentage</u>
Greater than 2.00 to 1.00	2.50%	1.50%	0.35%
Less than or equal to 2.00 to 1.00 and greater than 1.50 to 1.00	2.25%	1.25%	0.30%
Less than or equal to 1.50 to 1.00 and greater than 1.00 to 1.00	2.00%	1.00%	0.25%
Less than or equal to 1.00 to 1.00	1.75%	0.75%	0.20%

The Applicable Margin shall be adjusted from time to time on the calendar day immediately following the First Grid Calculation Date and thereafter upon delivery to Agent of the financial statements for each Fiscal Quarter required to be delivered pursuant to Section 5.1 hereof accompanied by a Compliance Certificate with a written calculation of the Consolidated Total Net Leverage Ratio. If such calculation indicates that the Applicable Margin shall increase or decrease, then on the first day of the calendar month following the date of delivery of such financial statements and a Compliance Certificate with such written calculation, the Applicable Margin shall be adjusted in accordance therewith; provided, however, that if an Event of Default shall have occurred, then, at Agent's election, effective as of the date on which such Event of Default occurs and continuing through the date as of which such Event of Default is waived, if any, the Applicable Margin shall equal the highest Applicable Margin specified in the pricing table set forth above. Notwithstanding anything herein to the contrary, (i) Swing Loans may not be LIBOR Rate Loans and (ii) Incremental Term Loans shall have the Applicable Margin set forth in the applicable Incremental Joinder Agreement.

In the event that any financial statement or Compliance Certificate delivered pursuant to Sections 5.1 or 5.2 is inaccurate, and such inaccuracy, if corrected, would have led to the imposition of a higher Applicable Margin for any period than the Applicable Margin applied for that period, then (i) the Borrowers shall immediately deliver to Agent a corrected financial statement and a corrected Compliance Certificate for that period (the "Corrected Financials Date"), (ii) the Applicable Margin shall be determined based on the corrected Compliance Certificate for that period, and (iii) the Borrowers shall immediately pay to Agent (for the account of the Lenders that hold the Commitments and Loans at the time such payment is received, regardless of whether those Lenders held the Commitments and Loans during the relevant period) the accrued additional interest owing as a result of such increased Applicable Margin for that period; provided, for the avoidance of doubt, such deficiency shall be due and payable as at such Corrected Financials Date and no Default or Event of Default under Section 8.1(a) shall be deemed to have occurred with respect to such deficiency prior to such date. This paragraph shall not limit the rights of Agent or the Lenders with respect to Section 2.3(c) and Article VIII hereof, and shall survive the termination of this Agreement until the payment in full in cash of the aggregate outstanding principal balance of the Loans.

"**Applicable Unused Commitment Fee**" means (a) initially 0.20% per annum and (b) from and after the First Grid Calculation Date, the "Unused Commitment Fee Percentage" set forth in the Pricing Grid in effect from time to time determined as set forth in the definition of Applicable Margin based upon the applicable Consolidated Total Net Leverage Ratio then in effect.

"**Approved Fund**" means, with respect to any Lender, any Person (other than a natural Person) that (a) (i) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business or (ii) temporarily warehouses loans for any Lender or any Person described in clause (i) above and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

"**Arranger Fee Letter**" as defined in Section 2.9(a).

"**Assignment**" means an assignment agreement entered into by a Lender, as assignor, and any Person, as assignee, substantially in the form of Exhibit 1.1(a) or any other form approved by Agent.

"**Attorney Costs**" means and includes all reasonable, customary and documented fees, expenses and disbursements of (a) one external counsel, (b) to the extent necessary, one local counsel in each relevant

jurisdiction, (c) regulatory counsel if reasonably required and (d) solely in the event of a conflict of interest, one additional counsel (and, if necessary, one local counsel in each relevant jurisdiction and one regulatory counsel) to each group (which may be a single Person) of similarly situated affected Persons.

“**Availability**” means, as of any date of determination, the amount by which (a) the Maximum Revolving Loan Balance exceeds (b) the aggregate outstanding principal balance of Revolving Loans.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“**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 I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bankruptcy Code**” means the Federal Bankruptcy Reform Act of 1978, as the same may be amended from time to time.

“**Base Rate**” means, for any day, a floating interest rate per annum equal to the highest of (a) the rate of interest from time to time announced by the Agent at its principal office as its prime commercial lending rate (it being understood that such prime commercial rate is a reference rate and does not necessarily represent the lowest or best rate being charged by the Agent to any customer and such rate is set by the Agent based upon various factors including the Agent’s costs and desired return, general economic conditions and other factors), (b) the sum of one half of one percent (0.50%) per annum and the Federal Funds Rate and (c) the sum of (x) LIBOR calculated for each such day based on an Interest Period of one month determined two (2) Business Days prior to such day (giving effect to the minimum LIBOR rate of 0.00% per annum), plus (y) the excess of the Applicable Margin for LIBOR Rate Loans over the Applicable Margin for Base Rate Loans. Any change in the Base Rate due to a change in any of the foregoing shall be effective on the effective date of such change in the Agent’s prime commercial lending rate, the Federal Funds Rate or LIBOR for an Interest Period of one month.

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

“**Base Rate Margin**” as defined in the definition of Applicable Margin.

“**Benchmark**” means, initially, USD LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to Section 11.6, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“Benchmark Replacement” means, for any Available Tenor:

(1) For purposes of clause (a) of Section 11.6, the sum of: (i) Daily Compounded SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in clause (a) of Section 11.6; and

(2) For purposes of clause (b) of Section 11.6, the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Agent and the Borrower as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for Dollar-denominated syndicated credit facilities at such time;

provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

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

“Benchmark Transition Event” means, with respect to any then-current Benchmark other than USD LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

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

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person

whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**Bona Fide Debt Fund**” means any bona fide debt fund, investment vehicle, regulated banking entity or non-regulated lending entity that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans or bonds and/or similar extensions of credit in the ordinary course of business.

“**Borrower**” as defined in the preamble hereto.

“**Borrower Materials**” as defined in Section 10.10(a)(i).

“**Borrower Representative**” as defined in Section 2.12.

“**Borrowing**” means a borrowing hereunder consisting of Loans made to or for the benefit of the Borrowers on the same day by the Lenders pursuant to Article II.

“**Business Day**” means any day that is not a Saturday, Sunday or a day on which banks are required or authorized to close in New York City and, when determined in connection with notices and determinations in respect of LIBOR or any LIBOR Rate Loan or any funding, conversion, continuation, Interest Period or payment of any LIBOR Rate Loan, that is also a day on which dealings in Dollar deposits are carried on in the London interbank market.

“**Capital Adequacy Regulation**” means any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy or liquidity of any Lender or of any corporation controlling a Lender.

“**Capital Lease**” means, with respect to any Person, any lease of, or other arrangement conveying the right to use, any Property by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

“**Capital Lease Obligations**” means, at any time, with respect to any Capital Lease, any lease entered into as part of any sale leaseback transaction of any Person or any synthetic lease, the amount of all obligations of such Person that is (or that would be, if such synthetic lease or other lease were accounted for as a Capital Lease) capitalized on a balance sheet of such Person prepared in accordance with GAAP.

“**Capital One**” as defined in the preamble hereto.

“**Cash Equivalents**” means (a) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or (ii) issued by any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government, (b) any readily-marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least “A-1” from S&P or at least “P-1” from Moody’s, (c) any commercial paper rated at least “A-1” by S&P or “P-1” by Moody’s and issued by any Person organized under the laws of any state of the United States, (d) any Dollar-denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers’ acceptance issued or accepted by (i) any Lender or (ii) any commercial bank that is (A) organized under the laws of the United States, any state thereof or the District of Columbia, (B) “adequately capitalized” (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined

in such regulations) in excess of \$250,000,000 and (e) shares of any United States money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (a), (b), (c) or (d) above with maturities as set forth in the proviso below, (ii) has net assets in excess of \$500,000,000 and (iii) has obtained from either S&P or Moody's the highest rating obtainable for money market funds in the United States; provided, however, that the maturities of all obligations specified in any of clauses (a), (b), (c) or (d) above shall not exceed 365 days.

"Cash Management Agreement" means any agreement to provide one or more of the following types of services or facilities: (a) Automated Clearing House (ACH) transactions, (b) cash management services, including controlled disbursement services, treasury, depository, overdraft, credit or debit card, stored value card, electronic funds transfer services, and (c) foreign exchange facilities or other cash management arrangements in the ordinary course of business. For the avoidance of doubt, Cash Management Agreements do not include Rate Contracts.

"Change of Control" means (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall at any time become the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 30% or more on a fully diluted basis of the voting interests in Stock of Amphastar or (b) a "change of control" however so defined in any document governing any Material Indebtedness, or any term of similar effect, shall occur.

"Class" (a) when used with respect to Lenders, refers to whether such Lenders have a Loan or Commitment with respect to a particular "class" (as described in clauses (b) or (c) of this definition) of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Loan Commitments, Incremental Revolving Loan Commitments, Extended Revolving Loan Commitments, Term Loan Commitments, Incremental Term Loan Commitments or Extended Term Loan Commitments and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Revolving Loans, Incremental Revolving Loans, Term Loans, Extended Revolving Loans, Incremental Term Loans or Extended Term Loans in each case, under this Agreement as originally in effect or amended pursuant to Section 2.1(e) or 10.1), of which such Loans, Borrowing or Commitments shall be a part. Revolving Loan Commitments, Term Loan Commitments, Incremental Revolving Loan Commitments, Incremental Term Loan Commitments, Extended Revolving Loan Commitments or Extended Term Loan Commitments (and in each case, the Loans made pursuant to such Commitments) that have different terms and conditions shall be construed to be in different Classes. Notwithstanding the foregoing, Commitments (and in each case, the Loans made pursuant to such Commitments), including any Incremental Revolving Loan Commitments or Incremental Term Loan Commitments intended to be fungible with any existing Revolving Loan Commitment or Term Loan Commitments that have identical terms and conditions shall be construed to be in the same Class.

"Closing Date" means August 4, 2021.

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means, other than Excluded Property, all Property and interests in Property and proceeds thereof now owned or hereafter acquired by any Credit Party, and any other Person who has granted a Lien to Agent, in or upon which a Lien is granted, purported to be granted, or now or hereafter exists in favor of any Lender or Agent for the benefit of Agent, Lenders and other Secured Parties, under any Loan Document.

"Collateral Documents" means, collectively, the Guaranty and Security Agreement, the Mortgages, the French Collateral Documents, each Control Agreement and all other security agreements, guaranties and other similar agreements, and all amendments, restatements, modifications or supplements

thereof or thereto, by or between any one or more of any Credit Party, any of their respective Subsidiaries or any other Person pledging or granting a lien on Collateral or guarantying the payment and performance of the Obligations, and any Lender or Agent for the benefit of Agent, the Lenders and other Secured Parties now or hereafter delivered to the Lenders or Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the UCC or comparable law) against any such Person as debtor in favor of any Lender or Agent for the benefit of Agent, the Lenders and the other Secured Parties, as secured party, as any of the foregoing may be amended, restated and/or modified from time to time.

“**Commitment**” means, for each Lender, the sum of its Revolving Loan Commitment and Term Loan Commitment.

“**Commitment Percentage**” means, as to any Lender, the percentage equivalent of such Lender’s Revolving Loan Commitment or Term Loan Commitment divided by the Aggregate Revolving Loan Commitment or Aggregate Term Loan Commitment, as applicable; provided that after the Term Loans have been funded, Commitment Percentages shall be determined for the Term Loans by reference to the outstanding principal balances thereof as of any date of determination rather than the Commitments therefor; provided, further, that following acceleration of the Loans, such term means, as to any Lender, the percentage equivalent of the principal amount of the Loans held by such Lender, divided by the aggregate principal amount of the Loans held by all Lenders.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time.

“**Competitor**” means any Person that is an operating company or any direct parent thereof that directly and primarily engaged in substantially similar business operations as any Credit Party.

“**Compliance Certificate**” as defined in Section 5.2(b).

“**Compliance Program**” as defined in Section 5.15.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Adjusted EBITDA**” means, for any period,

- (1) Consolidated EBITDA, plus
- (2) with respect to Targets which are Subsidiaries and owned by Amphastar or any of its Subsidiaries for which Agent has received financial statements pursuant to Section 5.1(b) for less than four (4) Fiscal Quarters, Pro Forma Target EBITDA (which may be a negative number) allocated to each period prior to the acquisition thereof included in the trailing four (4) Fiscal Quarter period for which Consolidated Adjusted EBITDA is being calculated, minus
- (3) with respect to any Disposition consummated within the period in question, Consolidated EBITDA (which may be a negative number) attributable to the Subsidiary, profit centers, or other asset which is the subject of such Disposition from the beginning of such period until the date of consummation of such Disposition.

“**Consolidated Capital Expenditures**” means, for any period, all expenditures for the period of measurement that should be capitalized under GAAP, excluding (to the extent otherwise included) any such

expenditures financed with (1) Net Proceeds from Dispositions, (2) cash proceeds from Stock issuances or capital contributions, (3) Net Proceeds from any Event of Loss to the extent such proceeds are actually applied to replace, repair or reconstruct the damaged Property or Property affected by the condemnation or taking in connection with such Event of Loss, (4) cash proceeds of indemnity payments or third party reimbursements received by Amphastar or any of its Subsidiaries, and (5) the trade-in amount of existing equipment solely to the extent that the gross amount of the purchase price of equipment acquired substantially contemporaneously therewith is reduced by such trade-in amount; Consolidated Capital Expenditures shall also exclude that portion of the purchase price of a Target in a Permitted Acquisition or other Acquisition permitted hereunder that constitutes a capital expenditure under GAAP.

“**Consolidated Cash Flow**” means, for any period, (1) Consolidated EBITDA minus the sum of, without duplication, (2) (a) Consolidated Unfinanced Cash Capital Expenditures, (b) Restricted Payments paid or payable in cash during such period (excluding Restricted Payments constituting Net Stock Repurchases), (c) Net Stock Repurchases, and (d) Contingent Acquisition Consideration paid or payable in cash during such period.

“**Consolidated EBITDA**” means, for any period, net income (or loss) for the applicable period of measurement of Amphastar and its Subsidiaries (together with the other Persons whose income or loss is taken into account as provided below in determining Consolidated EBITDA) on a consolidated basis determined in accordance with GAAP, without duplication of any item described under clause (a) or (b) below (and the term “duplication” shall include any cash reimbursement for any loss or expense or other item for which an add-back is provided below), in each case to the extent taken into account in the calculation of net income (or loss) for such period:

(a) Less:

(1) the income (or plus the loss) of any Person which is not a Subsidiary of Amphastar or any of its Subsidiaries, except to the extent of the amount of dividends or other distributions actually paid to Amphastar or any of its Subsidiaries in cash or Cash Equivalents by such Person and the payment of dividends or similar distributions by that Person was not at the time subject to the consent of a third party or prohibited by operation of the terms of its charter or of any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Person,

(2) the income (or plus the loss) of any Person accrued prior to the date it becomes a Subsidiary of a Borrower or is merged into or consolidated with Amphastar or any of its Subsidiaries or that Person’s assets are acquired by Amphastar or any of its Subsidiaries,

(3) the proceeds of any insurance (other than business interruption insurance),

(4) gains (or plus losses) from the sale, exchange, transfer or other disposition of Property not in the ordinary course of business of Amphastar and its Subsidiaries, and related tax effects in accordance with GAAP,

(5) income tax refunds received, in excess of income tax liabilities,

(6) income (or plus the loss) from the early extinguishment of Indebtedness, net of related tax effects,

(b) Plus:

(1) depreciation and amortization expenses for such period (including amortization of intangible assets),

(2) Consolidated Net Interest Expense,

(3) all Taxes on or measured by income (excluding income tax refunds),

(4) reserved,

(5) all non-cash losses and other non-cash charges or reasonable and documented expenses (or minus non-cash income or gain), including non-cash adjustments resulting from the application of purchase accounting, non-cash expenses arising from grants of stock appreciation rights, stock options or restricted stock, non-cash impairment of good will and other long term intangible assets, unrealized non-cash losses (or minus unrealized non-cash gains) under Rate Contracts, unrealized non-cash losses (or minus unrealized non-cash gains) in such period due solely to fluctuations in currency values, but excluding any non-cash loss, charge or expense (i) that is an accrual of a reserve for a cash expenditure or payment to be made, or anticipated to be made, in a future period or (ii) relating to a write-down, write off or reserve with respect to accounts receivable or Inventory,

(6) fees and reasonable and documented out-of-pocket expenses incurred in connection with the negotiation, execution and delivery on the Closing Date of the Loan Documents,

(7) fees and reasonable, documented, out-of-pocket expenses incurred in connection with any amendments or waivers to this Agreement and the other Loan Documents to the extent such fees and expenses have been disclosed to Agent,

(8) fees and reasonable and documented out-of-pocket expenses incurred in connection with any (i) consummated (w) Permitted Acquisition or other Acquisition or Investment not in the ordinary course of business, (x) Restricted Payment not in the ordinary course of business, (y) Disposition not in the ordinary course of business, or (z) issuance or repayment of Indebtedness, issuance of Stock (including in connection with any registration of securities or exchange offer), refinancing transaction or amendment or modification of any debt instrument, and/or (ii) Event of Loss,

(9) fees and reasonable and documented, out-of-pocket expenses (such fees and expenses described in this clause (9), collectively, "Unconsummated Transaction Fees") incurred in connection with any contemplated or proposed (i) Permitted Acquisition or other Acquisition or Investment not in the ordinary course of business, (ii) Restricted Payment not in the ordinary course of business, (iii) Disposition not in the ordinary course of business or (iv) incurrence of Indebtedness or proposed issuance of Stock (including in connection with any registration of securities or exchange offer), refinancing transaction or amendment or modification of any debt instrument, in each instance in the foregoing clauses (i), (ii), (iii) or (iv) which is not consummated and which is permitted under this Agreement, to the extent all such Unconsummated Transaction Fees are certified as such in a certificate of a Responsible Officer of the Borrower Representative to Agent describing such fees and expenses in reasonable detail,

(10) non-recurring or unusual reasonable, documented, out-of-pocket expenses including severance costs, lease termination costs, relocation costs, restructuring charges, retention or completion bonuses, signing costs and other non-recurring expenses (including any costs, charges, accruals, reserves or expenses incurred during such period attributable to the undertaking and/or implementation of cost savings initiatives or operating expense reductions and similar initiatives, integration, transition, reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, and business optimization costs) not otherwise added back to Consolidated EBITDA (collectively, "**Non- Recurring Expenses**")

in an aggregate amount not to exceed twenty-five percent (25%) of Consolidated EBITDA (calculated after the addback for Non-Recurring Expenses) in the aggregate for any four consecutive Fiscal Quarter period; provided that a Responsible Officer of the Borrower Representative shall have provided a reasonably detailed statement or schedule of such Non-Recurring Expenses,

(11) reserved,

(12) proceeds of business interruption insurance received in cash to the extent not taken into account in the calculation of net income (or loss),

(13) any reasonable, documented, out-of-pocket costs and expenses incurred by a Borrower or its Subsidiaries pursuant to any management equity plan or stock option plan or any management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent such costs or expenses are funded with Net Issuance Proceeds contributed to the capital of Amphastar or Net Issuance Proceeds of an issuance of Stock of Amphastar, and

(14) non-cash expenses resulting from any employee benefit or management compensation plan or the grant of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs to employees of a Borrower or any Subsidiary of a Borrower pursuant to a written plan or agreement or the treatment of such options under variable plan accounting.

“Consolidated Fixed Charge Coverage Ratio” means, for any period, the ratio of:

(1) Consolidated Cash Flow for such period, less, for Amphastar and its Subsidiaries all Taxes on or measured by income (excluding income tax refunds) paid or payable in cash with respect to such period, to

(2) Consolidated Fixed Charges for such period.

For purposes of determining the Consolidated Fixed Charge Coverage Ratio for any relevant calculation period including periods prior to the Closing Date, the amounts described in clauses (1) and (2) of the definition of “Consolidated Fixed Charges” shall be equal to (i) the amounts thereof paid or distributed during the period beginning on August 4, 2021 and ending on the last day of the relevant calculation period (the “Actual Period”) multiplied by (ii) a fraction, the numerator of which is 365 and the denominator of which is the number of days in the relevant Actual Period.

“Consolidated Fixed Charges” means for Amphastar and its Subsidiaries, for such period, the sum of:

(1) Consolidated Net Interest Expense for such period, and

(2) Scheduled principal payments of Indebtedness during such period reduced by prepayments of the Term Loans as permitted by the Loan Documents.

“Consolidated Funded Indebtedness” means, as of any date of measurement, all Indebtedness of Amphastar and its Subsidiaries as of the date of measurement (other than Indebtedness of the type described in clauses (e), (h), (i), (j) (other than, with respect to clause (j), guaranties of Indebtedness of others of the type not described in clauses (e), (g), (h), (i), (k), (l) and (m) of the definition of Indebtedness), (k), (l) and (m) of the definition of Indebtedness).

“Consolidated Net Interest Expense” means for Amphastar and its Subsidiaries for any period:

(1) Gross interest expense (including that attributable to Capital Lease Obligations) for such period paid or required to be paid in cash (including all commissions, discounts, fees and other charges in connection with letters of credit and similar instruments and net amounts paid or payable and/or received or receivable under permitted Rate Contracts in respect of interest rates) for Amphastar and its Subsidiaries on a consolidated basis, less

(2) Interest income for such period.

“Consolidated Total Assets” means the consolidated total assets of the Borrowers and their respective Subsidiaries determined in accordance with GAAP as of the date of the financial statements most recently delivered pursuant to Section 5.1 hereunder.

“Consolidated Total Indebtedness” means, at any date, for Amphastar and its Subsidiaries, the sum of, without duplication, (i) all Consolidated Funded Indebtedness as of date of measurement, plus, (ii) L/C Reimbursement Obligations as of date of measurement then due and payable, plus (iii) Contingent Acquisition Consideration (valued in accordance with GAAP).

“Consolidated Total Net Leverage Ratio” means, as of any date of determination, the ratio of (x) Consolidated Total Net Indebtedness as of such date of determination to (y) Consolidated Adjusted EBITDA for the twelve month period most recently ended on or immediately prior to such date of determination for which financial statements have been delivered under Section 5.1.

“Consolidated Total Net Indebtedness” means, at any date, Consolidated Total Indebtedness net of unrestricted cash and Cash Equivalents of Amphastar and its Subsidiaries of up to \$25,000,000, with respect to which Agent has a first priority perfected Lien perfected by Control Agreements.

“Consolidated Unfinanced Cash Capital Expenditures” means, for any period, Consolidated Capital Expenditures, less (a) any such expenditures financed with (1) Capital Leases or (2) other Indebtedness of Amphastar and its Subsidiaries; provided that Indebtedness, for this purpose, shall not include drawings under the Revolving Loan Commitment, Swingline Commitment or any other revolving credit facility and (b) any such expenditures funded on or before December 31, 2023, from the Prefunded Capital Expenditures Basket in an amount not to exceed the Prefunded Capital Expenditures Basket as of the date such expenditure was incurred.

“Contingent Acquisition Consideration” means any earnout obligation or similar deferred or contingent obligation of Amphastar or any of its Subsidiaries incurred or created in connection with a Permitted Acquisition or other Investment.

“Contractual Obligations” means, as to any Person, any provision of any security (whether in the nature of Stock, or otherwise) issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement (other than a Loan Document) to which such Person is a party or by which it or any of its Property is bound or to which any of its Property is subject.

“Control Agreement” means, with respect to any deposit account, securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to Agent, among Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried, and the Credit Party maintaining such account or owning such entitlement or contract, effective to grant “control” (within the meaning of Articles 8 and 9 under the applicable UCC) over such account to Agent (and, if applicable, such holder or representative).

“**Conversion Date**” means any date on which the Borrowers convert a Base Rate Loan to a LIBOR Rate Loan or a LIBOR Rate Loan to a Base Rate Loan.

“**Copyrights**” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordings thereof and all applications in connection therewith.

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Credit Parties**” means each Borrower and each other Person that (i) executes a guaranty of the Obligations and (ii) grants a Lien on all or substantially all of its assets to secure payment of the Obligations.

“**Daily Compounded SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining “Daily Compounded SOFR” for syndicated business loans; provided, that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

“**Default**” means any event or circumstance that, with the passing of time or the giving of notice or both, would (if not cured or otherwise remedied during such time) become an Event of Default.

“**Defaulting Lender**” means any Lender that:

(a) has failed to (i) fund any payments required to be made by it under the Loan Documents within two (2) Business Days after any such payment is due (excluding expense and similar reimbursements that are subject to good faith disputes) unless such Lender notifies Agent and the Borrower Representative in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied or (ii) pay to Agent, any L/C Issuer, any Swing Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Loans) within two (2) Business Days of the date when due,

(b) has given written notice (and Agent has not received a revocation in writing), to a Borrower, Agent, any Lender, or any L/C Issuer or has otherwise publicly announced (and Agent has not received notice of a public retraction) that such Lender believes it will fail to fund payments or purchases of participations required to be funded by it under the Loan Documents or one or more other syndicated credit facilities (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), or

(c) has, or any Person that directly or indirectly controls such Lender has, (i) become subject to a voluntary or involuntary case under the Bankruptcy Code or any similar bankruptcy laws, (ii) had a custodian, conservator, receiver or similar official appointed for it or any substantial part of such Person’s assets, (iii) made a general assignment for the benefit of creditors, been liquidated, or otherwise been adjudicated as, or determined by any Governmental Authority having regulatory authority over such Person or its assets to be, insolvent or bankrupt, or (iv) become the subject of a Bail-In Action, and for this clause

(c), Agent has determined that such Lender is reasonably likely to fail to fund any payments required to be made by it under the Loan Documents. For purposes of this definition, control of a Person shall have the same meaning as in the second sentence of the definition of Affiliate.

“**Disposition**” means (a) the sale, lease, conveyance or other disposition of Property and (b) the sale or transfer by a Borrower or any Subsidiary of a Borrower of any Stock issued by any Subsidiary of a Borrower.

“**Disqualified Institutions**” means any Person that is (a) designated by the Borrower Representative, by written notice delivered to Agent on or prior to the date hereof, as a (i) disqualified institution or (ii) Competitor or (b) clearly identifiable, solely on the basis of such Person’s name, as an Affiliate of any Person referred to in clause (a)(i) or (a)(ii) above; provided, however, Disqualified Institutions shall (A) exclude any Person that the Borrower Representative has designated as no longer being a Disqualified Institution by written notice delivered to Agent from time to time and (B) include (I) any Person that is added as a Competitor and (II) any Person that is clearly identifiable, solely on the basis of such Person’s name, as an Affiliate of any Person referred to in clause (B)(I), pursuant to a written supplement to the list of Competitors that are Disqualified Institutions, that is delivered by the Borrower Representative after the date hereof upon reasonable notice to Agent. Such supplement shall become effective two (2) Business Days after the date that such written supplement is delivered to Agent, but which shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Loans and/or Commitments as permitted herein. In no event shall a Bona Fide Debt Fund be a Disqualified Institution unless such Bona Fide Debt Fund is identified under clause (a)(i) above. As of the Closing Date, no Person has been designated as a Disqualified Institution.

“**Disqualified Stock**” means any Stock which, by its terms (or by the terms of any security or other Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures 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, on or prior to the date that is ninety-one (91) days following the Latest Maturity Date (excluding any provisions requiring redemption upon a “change of control” or similar event; provided that such “change of control” or similar event results in the occurrence of the Facility Termination Date), (b) is convertible into or exchangeable for (i) debt securities or (ii) any Stock referred to in (a) above, in each case, at any time on or prior to the date that is ninety-one (91) days following the Latest Maturity Date at the time such Stock was issued, or (c) is entitled to receive scheduled dividends or distributions in cash prior to the date that is ninety-one (91) days following the Latest Maturity Date.

“**Division**” shall mean, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons with the dividing Person either continuing or terminating its existence as part of the division including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law or any analogous action taken pursuant to any applicable Law with respect to any corporation, limited liability company, partnership or other entity. The word “**Divide**”, when capitalized shall have correlative meaning.

“**Dollars**”, “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Domestic Subsidiary**” means any Subsidiary incorporated, organized or otherwise formed under the laws of the United States, any state thereof or the District of Columbia.

“**DQ List**” as defined in Section 10.9(i)(ii).

“**Early Opt-in Effective Date**” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

“**Early Opt-in Election**” means the occurrence of:

(1) a notification by the Agent to (or the request by the Borrower to the Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Agent of written notice of such election to the Lenders.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Electronic Transmission**” means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System.

“**Employee Benefit Plan**” means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Credit Party or any Subsidiary of a Credit Party incurs or otherwise has any Liabilities.

“**Environmental Assessment**” means an environmental site assessment that meets the United States Environmental Protection Agency’s All Appropriate Inquiries Rule as codified in the Code of Federal Regulations (“C.F.R.”) at 40 C.F.R. Part 312.

“**Environmental Laws**” means all Requirements of Law and Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the workplace, the environment and natural resources, and including public notification requirements and environmental transfer of ownership, notification or approval statutes.

“**Environmental Liabilities**” means all Liabilities (including costs of removal and remedial actions, natural resource damages and costs and expenses of investigation and feasibility studies, including

the cost of environmental consultants and Attorney Costs) that may be imposed on, incurred by or asserted against any Credit Party or any Subsidiary of any Credit Party as a result of, or related to, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law relating to or resulting from the ownership, lease, sublease or other operation or occupation of property by any Credit Party or any Subsidiary of any Credit Party, whether on, prior or after the date hereof.

“**ERISA**” means the United States Employee Retirement Income Security Act of 1974.

“**ERISA Affiliate**” means, collectively, any Credit Party, any Subsidiary of a Credit Party, and any Person under common control or treated as a single employer with, any Credit Party or any Subsidiary of a Credit Party, within the meaning of Section 414(b) or (c) of the Code, and solely with respect to Section 412 of the Code (and other provisions of the Code significantly related thereto (e.g., Sections 430 through 436 of the Code)), under Section 414(m) or (o) of the Code.

“**ERISA Event**” means any of the following: (a) a reportable event described in Section 4043(b) or (c) of ERISA (or, unless the 30-day notice requirement has been duly waived under the applicable regulations) with respect to a Title IV Plan; (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any ERISA Affiliate from any Multiemployer Plan; (d) with respect to any Multiemployer Plan, the filing of a notice of insolvency or termination, or treatment of a plan amendment as termination, under Section 4041A of ERISA; (e) the filing of a notice of intent to terminate a Title IV Plan, or treatment of a plan amendment as termination, under Section 4041 of ERISA; (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due; (h) the imposition of a Lien under Section 412 or 430(k) of the Code or Section 303 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate; (i) a revocation by the IRS of the tax-exempt status of an Employee Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code; (j) a Title IV plan is in “at risk” status within the meaning of Code Section 430(i); (k) a Multiemployer Plan is in “endangered status” or “critical status” within the meaning of Section 432(b) of the Code; and (l) any other event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of any liability upon any ERISA Affiliate under Title IV of ERISA other than for contributions to Title IV Plans and Multiemployer Plans in the ordinary course and PBGC premiums due but not delinquent.

“**Erroneous Payment**” as defined in Section 2.11(d)(iii)(A).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Eurocurrency liabilities**” as defined in Section 11.7.

“**Event of Default**” as defined in Section 8.1.

“**Event of Loss**” means, with respect to any Property, any of the following: (a) any loss, destruction or damage of such Property; or (b) any condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Property, or confiscation of such Property or the requisition of the use of such Property.

“**EWB Mortgage Debt**” means the Indebtedness incurred by Amphastar or any other Credit Party in connection with the EWB Mortgage Documents.

“**EWB Mortgage Documents**” means, collectively, that certain Business Loan Agreement, dated as of May 18, 2017, by and between Amphastar and East West Bank, that certain Deed of Trust, dated as of May 18, 2017, by and between Amphastar and East West Bank and each other document, promissory note, security agreement and all other related documents, agreements, instruments and certificates entered into in connection therewith, in each case, as amended including, as amended by that certain Consent and Omnibus Amendment to Loan Documents dated as of the date hereof by and between Amphastar and East West Bank.

“**Exchange Act**” means the Securities Exchange Act of 1934.

“**Excluded Accounts**” as defined in Section 5.11.

“**Excluded Domestic Holdco**” means a Domestic Subsidiary substantially all of the assets of which consist of Stock of one or more Excluded Foreign Subsidiaries that have not guaranteed or pledged any of their assets to secure, or with respect to which there shall not have been pledged two-thirds or more of the voting Stock to secure, any Indebtedness (other than the Loans) of a Credit Party or any other Subsidiary of Amphastar which is a United States person within the meaning of Section 7701(a)(30) of the Code.

“**Excluded Domestic Subsidiary**” means any Domestic Subsidiary that is (a) a direct or indirect Subsidiary of an Excluded Foreign Subsidiary or (b) an Excluded Domestic Holdco.

“**Excluded Foreign Subsidiary**” means, collectively, (i) any Subsidiary organized under the laws of the People’s Republic of China, presently, Amphastar Nanjing Pharmaceuticals, Inc. and (ii) both Amphastar UK, Ltd. and International Medication Systems UK, Ltd. unless and until a given UK Subsidiary ceases to be an Immaterial Subsidiary.

“**Excluded Property**” has the meaning given to that term in the applicable Collateral Documents.

“**Excluded Rate Contract Obligation**” means, with respect to any Guarantor, any guarantee of any Swap Obligations under a Secured Rate Contract if, and only to the extent that and for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation under a Secured Rate Contract (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation under a Secured Rate Contract. If a Swap Obligation under a Secured Rate Contract arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation under a Secured Rate Contract that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“**Excluded Real Estate**” means (i) any Real Estate located in any jurisdiction other the United States, any state thereof or the District of Columbia with a fair market value less than \$5,000,000, and (ii) that certain fee-owned Real Estate located at 13760 Magnolia Avenue, Chino, California 91710, 13770 Magnolia Avenue, Chino, California 91710 and 11525 6th Street, Rancho Cucamonga, California 91730; provided that such Real Estate described in the preceding clause (ii) shall no longer constitute Excluded Real Estate, and shall be subject to the requirements set forth in Section 5.13 hereof, upon the termination of the EWB Mortgage Documents and any other mortgages, deed of trust, leasehold deed of trust, leasehold

mortgage, deed to secure debt, leasehold deed to secure debt or other document creating a Lien on such Real Estate in place with respect to such Real Estate as of the Closing Date.

“**Excluded Subsidiary**” means each (a) Excluded Domestic Subsidiary, (b) Excluded Foreign Subsidiary, (c) Subsidiary for which any guarantee of the Obligations (i) is legally prohibited by any Requirement of Law or requires any consent, approval, license or authorization from any Governmental Authority, unless such consent, approval, license or authorization has been received or (ii) is contractually prohibited on the Closing Date or on the date of the Acquisition or formation of such Subsidiary by any Credit Party or Subsidiary of any Credit Party, so long as such prohibition is not created in contemplation of such Acquisition or formation, (d) not-for-profit Subsidiary, (e) Subsidiary where the cost of granting a guarantee of the Obligations outweighs the benefit to the Secured Parties, as determined in the reasonable discretion of the Agent and Borrowers and (f) Immaterial Subsidiary.

“**Excluded Tax**” means with respect to any Secured Party: (a) Taxes measured by net income (including branch profits Taxes) and franchise Taxes imposed in lieu of net income Taxes, in each case (i) imposed on any Secured Party as a result of being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) withholding Taxes to the extent imposed pursuant to a law in effect on the date that such Person became a Secured Party under this Agreement in the capacity under which such Person makes a claim under Section 11.1(b) or designates a new Lending Office, except in each case to the extent such Person is a direct or indirect assignee (other than pursuant to Section 10.20) of any other Secured Party that was entitled, at the time the assignment to such Person became effective, to receive additional amounts under Section 11.1(b); (c) Taxes that are directly attributable to the failure (other than as a result of a change in any Requirement of Law) by any Secured Party to deliver the documentation required to be delivered pursuant to Section 11.1(g); and (d) any United States federal withholding Taxes imposed under FATCA.

“**Existing Facility**” as defined in Section 2.1(e)(iii)(B).

“**Extended Revolving Lender**” as defined in Section 10.1(f)(ii).

“**Extended Revolving Loan Commitment**” as defined in Section 10.1(f)(ii).

“**Extended Revolving Loan**” as defined in Section 10.1(f)(ii).

“**Extended Term Loan**” as defined in Section 10.1(f)(iii).

“**Extended Term Loan Commitment**” as defined in Section 10.1(f)(iii).

“**Extending Term Lender**” as defined in Section 10.1(f)(iii).

“**Extension**” as defined in Section 10.1(f).

“**Extension Offer**” as defined in Section 10.1(f).

“**E-Fax**” means any system used to receive or transmit faxes electronically.

“**E-Signature**” means the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

“**E-System**” means any electronic system approved by Agent, including Syndtrak®, Intralinks® and ClearPar® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

“**Facility Termination Date**” means the date on which (a) the Revolving Loan Commitments have terminated, (b) all Loans, all L/C Reimbursement Obligations, and all other Obligations (excluding Secured Rate Contract Obligations and Secured Cash Management Obligations unless Agent has theretofore been notified in writing by the holder thereof that such Secured Rate Contract Obligations or Secured Cash Management Obligations are then due and payable) have been paid and satisfied in full in cash, and (c) there shall have been deposited cash collateral with respect to all contingent Obligations (or, as an alternative to cash collateral, in the case of any Letter of Credit Obligation, Agent shall have received a back-up letter of credit) in amounts and on terms and conditions and with parties reasonably satisfactory to Agent and each Indemnitee that is, or may be, owed such Obligations (excluding contingent Obligations (other than L/C Reimbursement Obligations) as to which no claim has been asserted, Secured Rate Contract Obligations and Secured Cash Management Obligations).

“**FATCA**” means Sections 1471, 1472, 1473 and 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), current or future United States Treasury Regulations promulgated thereunder and published guidance with respect thereto, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreements with respect thereto.

“**FCPA**” as defined in Section 4.22(c).

“**FDA**” means the United States Food and Drug Administration and any successor thereto.

“**Federal Flood Insurance**” means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the National Flood Insurance Program.

“**Federal Funds Rate**” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as determined by Agent in a commercially reasonable manner, but in no event less than 0.0% per annum.

“**Federal Reserve Bank of New York’s Website**” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System, or any entity succeeding to any of its principal functions.

“**Fee Letters**” as defined in Section 2.9(a).

“**FEMA**” means the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

“**Final Availability Date**” means the earlier of (a) one (1) Business Day prior to the date specified in clause (a) of the definition of Revolving Termination Date and (b) the date on which the Aggregate Revolving Loan Commitment shall terminate in accordance with the provisions of this Agreement.

“**FIRREA**” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time.

“**First Grid Calculation Date**” as defined in the definition of Applicable Margin.

“**Fiscal Quarter**” means any of the quarterly accounting periods of Amphastar and its Subsidiaries ending on March 31, June 30, September 30 and December 31 of each year.

“**Fiscal Year**” means any of the annual accounting periods of Amphastar and its Subsidiaries ending on December 31 of each year.

“**Flood Insurance**” means, for any Real Estate (including any personal property Collateral located on such Real Estate) located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance reasonably satisfactory to Agent, in either case, that (a) meets the requirements of FEMA and any other applicable federal agencies, (b) includes a deductible not to exceed \$50,000 and (c) has a coverage amount equal to the lesser of (i) the insurable value of the buildings and any personal property Collateral located on the Real Estate as determined by Agent or (ii) the maximum policy limits set under the National Flood Insurance Program.

“**Flood Insurance Requirements**” means, with respect to any Mortgages, Agent shall have received: (i) evidence as to whether the applicable Real Estate is located in a Special Flood Hazard Area pursuant to a standard flood hazard determination form ordered and received by Agent, and (ii) if such Real Estate is located in a Special Flood Hazard Area, (A) evidence as to whether the community in which such Real Estate is located is participating in the National Flood Insurance Program, (B) the applicable Credit Party’s written acknowledgment of receipt of written notification from Agent as to the fact that such Real Estate is located in a Special Flood Hazard Area and as to whether the community in which such Real Estate is located is participating in the National Flood Insurance Program and (C) copies of the applicable Credit Party’s application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance reasonably satisfactory to Agent and naming Agent as sole loss payee on behalf of the Secured Parties.

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“**Foreign Subsidiary**” means, with respect to any Person, a Subsidiary of such Person, which Subsidiary is not a Domestic Subsidiary.

“**French Collateral Documents**” means (i) any Collateral Documents providing for the pledge of the shares of any French Guarantor and (ii) any security document pledging or granting a lien over Collateral located in France.

“**French Guarantor**” means a Guarantor incorporated in France.

“**GAAP**” means generally accepted accounting principles in the United States, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions and comparable stature and authority within the accounting profession) that are applicable to the circumstances as of the date of determination. Subject to Section 1.3, all references to “GAAP” shall be to GAAP applied consistently with the principles used in the preparation of the financial statements described in Section 5.1(a).

“Governmental Authority” means any nation, sovereign or government, any state or other political subdivision thereof, any agency, authority or instrumentality thereof and any entity or authority thereof exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners). Governmental Authority shall include the FDA, EMA, any other competent authority or notified body, and any comparable state or foreign government entities or authorities or entity with defined authority to oversee Regulatory Matters.

“Guarantor” means any Person that has guaranteed any Obligations.

“Guaranty and Security Agreement” means that certain Guaranty and Security Agreement, dated as of even date herewith, in form and substance reasonably acceptable to Agent and the Borrowers, made by the Credit Parties in favor of Agent, for the benefit of the Secured Parties.

“Hazardous Material” means any substance, material or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including petroleum or any fraction thereof, asbestos, per- and polyfluoroalkyl substances, polychlorinated biphenyls, and radioactive substances.

“Immaterial Subsidiary” means, at any date of determination, any Subsidiary of a Credit Party that, together with its Subsidiaries, (a) has total assets (including Stock in other Subsidiaries and excluding investments that are eliminated in consolidation) of less than 2.5% of Consolidated Total Assets as reflected in the financial statements most recently delivered on or prior to such date and (b) generates less than 2.5% of annual consolidated revenues on a pro forma basis for the four Fiscal Quarter period for which financial statements have been delivered (or are required to have been delivered) under Section 5.1 that has ended on or most recently prior to such date; *provided* that all “Immaterial Subsidiaries” that would be required to be Guarantors under Section 5.13 if they were not Immaterial Subsidiaries shall (A) generate not more than 5.0% of annual consolidated revenue on a pro forma basis and (B) have total assets of not more than 5.0% of Consolidated Total Assets; *provided* that, notwithstanding the foregoing, in no event shall a Subsidiary of a Credit Party that owns any Intellectual Property material to the business of any Credit Party be deemed or designated as an Immaterial Subsidiary. For any determination made as of or prior to the time any Person is acquired as an indirect or direct Subsidiary of a Credit Party, such determination and designation shall be made based on financial statements provided by or on behalf of such Person in connection with the acquisition of such Person or such Person’s assets to the extent reasonably available. If such financial statements are not reasonably available, the Borrowers shall make such determination in reasonable good faith. The Borrowers may designate but not re-designate a Subsidiary as an Immaterial Subsidiary by providing notice to the Agent. If the Consolidated Total Assets or the revenues of all Immaterial Subsidiaries so designated by the Borrowers shall at any time exceed the threshold amounts set forth above, then Immaterial Subsidiaries that are so designated at such time shall automatically be re-designated as no longer being Immaterial Subsidiaries (starting with the largest such Subsidiary and continuing with the next largest and so on) until such threshold amounts are no longer exceeded, and the Credit Parties shall promptly (and in any event within thirty (30) days of the date such financial statements are required to be delivered) comply with the requirements set forth in Section 5.13 with respect to such re-designated Subsidiaries.

“Incremental Effective Date” as defined in Section 2.1(e)(i).

“Incremental Facility” as defined in Section 2.1(e)(i).

“**Incremental Facility Request**” as defined in Section 2.1(e)(i).

“**Incremental Joinder Agreement**” as defined in Section 2.1(e)(iv).

“**Incremental Revolving Loan**” as defined in Section 2.1(e)(i).

“**Incremental Revolving Loan Commitment**” as defined in Section 2.1(e)(i).

“**Incremental Term Loan**” as defined in Section 2.1(e)(i).

“**Incremental Term Loan Commitment**” as defined in Section 2.1(e)(i).

“**Indebtedness**” of any Person means, without duplication: (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of Property or services, including Contingent Acquisition Consideration (other than trade payables entered into in the ordinary course of business); (c) the face amount of all letters of credit issued for the account of such Person (or for which such Person is liable) and without duplication, all drafts drawn thereunder and all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments issued by such Person (or for which such Person is liable); (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of Property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property); (f) all Capital Lease Obligations; (g) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off balance sheet financing product; (h) all obligations of such Person, whether or not contingent, in respect of Disqualified Stock, valued at, in the case of redeemable preferred Stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Stock plus accrued and unpaid dividends; (i) all indebtedness referred to in clauses (a) through (h) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in Property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness; (j) all direct or indirect liability, contingent or otherwise, of that Person with respect to any other Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (k) all direct or indirect liability, contingent or otherwise, of that Person under any Rate Contracts valued at the Swap Termination Value thereof as of any date of determination; (l) all direct or indirect liability, contingent or otherwise, of that Person to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (m) all direct or indirect liability, contingent or otherwise, of that Person for the obligations of another Person through any agreement to purchase, repurchase or otherwise acquire such obligation or any Property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another Person. The amount of any Indebtedness under the foregoing clauses (j) through (m) shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed or supported.

“**Indemnified Matter**” as defined in Section 10.6.

“**Indemnified Tax**” means (a) any Tax other than an Excluded Tax and (b) to the extent not otherwise described in clause (a), Other Taxes.

“**Indemnitee**” as defined in Section 10.6.

“**Insolvency Proceeding**” means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case in (a) and (b) above, undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

“**Intellectual Property**” means all rights, title and interests in or relating to (a) intellectual property and industrial property arising under any Requirement of Law, including all Copyrights, Patents, Software, Trademarks, Internet Domain Names, Trade Secrets, (b) all IP Ancillary Rights relating thereto and (c) IP Licenses.

“**Interest Payment Date**” means, (a) with respect to any LIBOR Rate Loan (other than a LIBOR Rate Loan having an Interest Period longer than three (3) months) the last Business Day of each Interest Period applicable to such Loan, (b) with respect to any LIBOR Rate Loan having an Interest Period of three (3) or more months, the last Business Day of each three (3) month interval and, without duplication, the last Business Day of such Interest Period, and (c) with respect to Base Rate Loans (including Swing Loans) the last Business Day of each calendar quarter.

“**Interest Period**” means, with respect to any LIBOR Rate Loan, the period commencing on the Business Day such Loan is disbursed or continued or on the Conversion Date on which a Base Rate Loan is converted to the LIBOR Rate Loan and ending on the date one, three, six or, if available to all applicable Lenders, twelve months thereafter, as selected by the Borrower Representative in its Notice of Borrowing or Notice of Conversion/Continuation; provided that:

(a) if any Interest Period pertaining to a LIBOR Rate Loan would otherwise end on a day which is not a Business Day, that Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;

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

(c) no Interest Period for a Term Loan or any portion thereof shall extend beyond the last scheduled payment date therefor and no Interest Period for any Revolving Loan shall extend beyond the Revolving Termination Date; and

(d) no Interest Period applicable to a Term Loan or portion thereof shall extend beyond any date upon which is due any scheduled principal payment in respect of such Term Loan unless the aggregate principal amount of such Term Loan represented by Base Rate Loans or by LIBOR Rate Loans having Interest Periods that will expire on or before such date is equal to or in excess of the amount of such principal payment.

“**Internet Domain Name**” means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to internet domain names.

“**Inventory**” means all “inventory” (as such term is defined in the UCC) of Amphastar and its Subsidiaries.

“**Investment**” as defined in Section 6.4.

“**IP Ancillary Rights**” means, with respect to any Intellectual Property (of the type described in clauses (a) and (c) of the definition of Intellectual Property), as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and Liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

“**IP License**” means all Contractual Obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in or relating to any Intellectual Property of the type described in clause (a) of the definition of Intellectual Property.

“**IRS**” means the Internal Revenue Service of the United States and any successor thereto.

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

“**Issue**” means, with respect to any Letter of Credit, to issue, extend the expiration date of, renew (including by failure to object to any automatic renewal on the last day such objection is permitted), increase the face amount of, or reduce or eliminate any scheduled decrease in the face amount of, such Letter of Credit, or to cause any Person to do any of the foregoing. The terms “**Issued**” and “**Issuance**” have correlative meanings.

“**Latest Maturity Date**” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Term Loan, any Incremental Term Loan Commitment, any Extended Term Loan Commitment, any Incremental Revolving Loan, any Incremental Revolving Loan Commitment or any Extended Revolving Loan Commitments, in each case as extended in accordance with this Agreement from time to time.

“**L/C Issuer**” means any Lender or an Affiliate thereof or a bank or other legally authorized Person, in each case, reasonably acceptable to Agent, in such Person’s capacity as an issuer of Letters of Credit hereunder.

“**L/C Reimbursement Agreement**” as defined in Section 2.1(c)(i)(C).

“**L/C Reimbursement Date**” as defined in Section 2.1(c)(v).

“**L/C Reimbursement Obligation**” means, for any Letter of Credit, the obligation of the Borrowers to the L/C Issuer thereof or to Agent, as and when matured, to pay all amounts drawn under such Letter of Credit.

“**L/C Request**” as defined in Section 2.1(c)(ii).

“**L/C Submit**” as defined in Section 2.1(c)(i)(A).

“**Lead Arrangers**” means, collectively, Capital One, National Association and East West Bank.

“**Lender**” as defined in the preamble hereto.

“**Lending Office**” means, with respect to any Lender, the office or offices of such Lender specified as its “Lending Office” beneath its name on the applicable signature page hereto, or such other office or offices of such Lender as it may from time to time notify the Borrower Representative and Agent.

“**Letter of Credit**” means documentary or standby letters of credit Issued for the account of the Borrowers by L/C Issuers, and bankers’ acceptances issued by a Borrower in connection therewith, for which Agent and Lenders have incurred Letter of Credit Obligations.

“**Letter of Credit Fee**” as defined in Section 2.9(c).

“**Letter of Credit Obligations**” means all outstanding obligations incurred by Agent and Lenders at the request of the Borrowers or the Borrower Representative, whether direct or indirect, contingent or otherwise, due or not due, in connection with the Issuance of Letters of Credit by L/C Issuers or the purchase of a participation as set forth in Section 2.1(c) with respect to any Letter of Credit. The amount of such Letter of Credit Obligations shall equal the maximum amount that may be payable by Agent and Lenders thereupon or pursuant thereto.

“**Liabilities**” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, attorney’s fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“**LIBOR**” means, for each Interest Period, the offered rate per annum for deposits of Dollars for the applicable Interest Period that appears on Reuters Screen LIBOR01 Page (or the applicable successor page) as of 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period. If no such offered rate exists, such rate will be the rate of interest per annum, as determined by Agent at which deposits of Dollars in immediately available funds are offered at 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period by major financial institutions reasonably satisfactory to Agent in the London interbank market for such Interest Period for the applicable principal amount on such date of determination. Notwithstanding the foregoing, in no event shall LIBOR be less than 0.00% per annum.

“**LIBOR Margin**” as defined in the definition of Applicable Margin.

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

“**Lien**” means any mortgage, deed of trust, pledge, hypothecation, collateral assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or otherwise), security interest or other security arrangement and any other preference, priority or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“**Limited Condition Acquisition**” means any Permitted Acquisition by one or more of the Borrowers or one or more of their Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third party financing and which is consummated no more than ninety (90) days after the applicable Limited Condition Acquisition Agreement is executed and effective.

“**Limited Condition Acquisition Agreement**” as defined in Section 1.5.

“**Loan**” means any loan made or deemed made by any Lender hereunder.

“**Loan Documents**” means this Agreement, the Notes, the Fee Letters, the Collateral Documents, all agreements entered into with respect to the Letters of Credit, the Master Agreement for Standby Letters of Credit, the Master Agreement for Documentary Letters of Credit, and all documents delivered to Agent and/or any Lender in connection with any of the foregoing (excluding any Secured Rate Contract or any Secured Cash Management Agreement).

“**Margin Stock**” means “margin stock” as such term is defined in Regulation T, U or X of the Federal Reserve Board.

“**Master Agreement for Documentary Letters of Credit**” means that certain Master Agreement for Documentary Letters of Credit, dated as of the Closing Date between the Borrower Representative on behalf of all Credit Parties and Capital One, as an L/C Issuer.

“**Master Agreement for Standby Letters of Credit**” means that certain Master Agreement for Standby Letters of Credit, dated as of the Closing Date between the Borrower Representative on behalf of all Credit Parties and Capital One, as an L/C Issuer.

“**Material Adverse Effect**” means an effect that results in or causes, or could reasonably be expected to result in or cause, a material adverse change in any of (a) the financial condition, business, performance, operations, liabilities or Property of the Credit Parties and their Subsidiaries taken as a whole; (b) the ability of any Credit Party, any Subsidiary of any Credit Party or any other Person (other than Agent or Lenders) to perform its obligations under any Loan Document; or (c) the validity or enforceability of any Loan Document or the rights and remedies of Agent, the Lenders and the other Secured Parties under any Loan Document.

“**Material Environmental Liabilities**” means Environmental Liabilities exceeding \$2,000,000 in the aggregate.

“**Material Indebtedness**” means (i) the EWB Mortgage Debt, (ii) any Subordinated Indebtedness and (iii) any other Indebtedness (other than the Obligations but including Secured Rate Contract Obligations and Secured Cash Management Obligations) of any Credit Party or any of its Subsidiaries having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of \$5,000,000 or more.

“**Maximum Lawful Rate**” as defined in Section 2.3(d).

“**Maximum Revolving Loan Balance**” as defined in Section 2.1(b).

“**MNPI**” as defined in Section 10.10(a).

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Mortgage**” means any deed of trust, leasehold deed of trust, mortgage, leasehold mortgage, deed to secure debt, leasehold deed to secure debt or other document creating a Lien on Real Estate or any interest in Real Estate made by any Credit Party in favor of, or for the benefit of, Agent (or a nominee or sub-agent therefor) for the benefit of the Secured Parties (or any one or more of them), in form and substance reasonably satisfactory to Agent and the Borrower Representative.

“**Multiemployer Plan**” means any multiemployer plan, as defined in Section 3(37) or 4001(a)(3) of ERISA, as to which any ERISA Affiliate incurs or otherwise has any obligation or Liabilities (including any contingent or secondary Liabilities).

“**National Flood Insurance Program**” means the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, that, among other things, mandates the purchase of flood insurance to cover real property improvements and contents located in Special Flood Hazard Areas in participating communities and may provide protection to property owners through a federal insurance program.

“**Net Issuance Proceeds**” means, in respect of any issuance of equity or incurrence of Indebtedness, cash proceeds (including cash proceeds as and when received in respect of non-cash proceeds received or receivable in connection with such issuance), net of underwriting discounts and reasonable out-of-pocket costs and expenses paid or incurred in connection therewith in favor of any Person not an Affiliate of a Borrower.

“**Net Proceeds**” means proceeds in cash, checks or other cash equivalent financial instruments (including Cash Equivalents) as and when received by the Person making a Disposition, as well as insurance proceeds and condemnation and similar awards received on account of an Event of Loss, net of: (a) in the event of a Disposition (i) the direct costs relating to such Disposition excluding amounts payable to a Borrower or any Affiliate of a Borrower, (ii) sales, use or other transaction Taxes paid or payable as a result thereof, (iii) amounts required to be applied to pay principal, interest and prepayment premiums and penalties on Indebtedness (other than the Obligations) secured by a Lien on the asset which is the subject of such Disposition and prior to the Lien securing the Obligations and (iv) any escrow or reserve for any indemnification payments (fixed or contingent) attributable to seller’s indemnities and representations and warranties to purchaser in respect of the applicable Disposition undertaken by any Borrower or any of their respective Subsidiaries or other liabilities in connection with such Disposition (provided that upon release of any such escrow or reserve, the amount released shall be considered Net Proceeds) and (b) in the event of an Event of Loss, (i) all money actually applied to repair or reconstruct the damaged Property or Property affected by the condemnation or taking, (ii) all of the costs and expenses reasonably incurred in connection with the collection of such proceeds, award or other payments, and (iii) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

“**Net Stock Repurchases**” means, for any period, the aggregate consideration paid by any Credit Party during such period to purchase Stock of Amphastar, minus the net cash proceeds received by any Credit Party during such period from employee Stock compensation plans (excluding amounts constituting withholding tax payments).

“**Non-Recurring Expenses**” as defined in the definition of Consolidated EBITDA.

“**Non-U.S. Lender Party**” means each of Agent, each Lender, each L/C Issuer, each SPV and each participant, in each case that is not a United States person as defined in Section 7701(a)(30) of the Code.

“**Non-U.S. Plan**” means any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by a Credit Party or one or more Subsidiaries of a Credit Party primarily for the benefit of employees of the Credit Party or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement, or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“**Note**” means any Revolving Note, Swingline Note or Term Note and “**Notes**” means all such Notes.

“**Notice of Borrowing**” means a notice given by the Borrower Representative to Agent pursuant to Section 2.5, in substantially the form of Exhibit 1.1(b) hereto.

“**Notice of Conversion/Continuation**” as defined in Section 2.6(a).

“**Obligations**” means all Loans, and other Indebtedness, advances, debts, liabilities, obligations, L/C Reimbursement Obligations, covenants and duties owing by any Credit Party to any Lender, Agent, any L/C Issuer, any Secured Swap Provider, any Secured Cash Management Bank or any Person required to be indemnified, that arises under any Loan Document, Secured Rate Contract or Secured Cash Management Agreement, or letter of credit reimbursement or similar agreement, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guaranty, indemnification or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired (whether or not accruing after the filing of any case under the Bankruptcy Code and whether or not a claim for post-filing or post-petition interest, fees and charges is allowed or allowable in any such proceeding); provided, that Obligations of any Guarantor shall not include any Excluded Rate Contract Obligations solely of such Guarantor.

“**OFAC**” as defined in Section 4.22(a).

“**Organization Documents**” means, (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, and any shareholder rights agreement, (b) for any partnership, the partnership agreement and, if applicable, certificate of limited partnership, (c) for any limited liability company, the operating agreement and articles or certificate of formation or (d) for any other entity, any other document setting forth the manner of election or duties of the officers, directors, managers or other similar persons, or the designation, amount or relative rights, limitations and preference of the Stock of such entity.

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

“**Other Taxes**” as defined in Section 11.1(c).

“**Participant Register**” as defined in Section 10.9(f).

“**Participating Lender**” as defined in Section 10.20.

“**Patents**” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to letters patent and applications therefor.

“**Payment Notice**” as defined in Section 2.11(d)(iii)(B).

“**Payment Recipient**” as defined in Section 2.11(d)(iii)(A).

“**PBGC**” means the United States Pension Benefit Guaranty Corporation or any successor thereto.

“**Permits**” means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other Contractual Obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject, including all Regulatory Permits.

“**Permitted Acquisition**” means any Acquisition by a Credit Party or a Subsidiary of a Credit Party of all of the Stock of a Target or all or substantially all of the assets of a Target, in each case, to the extent that each of the following conditions shall have been satisfied:

(a) the Borrower Representative shall have delivered to Agent:

(i) at least two (2) Business Days prior to the consummation thereof (or such shorter period as Agent may accept), with respect to an Acquisition in which the Acquisition Consideration (as defined in clause (d) below) is greater than \$10,000,000, (A) notice of such Acquisition setting forth in reasonable detail the terms and conditions of such Acquisition, (B) pro forma financial statements of Amphastar and its Subsidiaries after giving effect to the consummation of such Acquisition and the incurrence or assumption of any Indebtedness in connection therewith, (C) to the extent available, audited financial statements or a review (which may be in the form of a quality of earnings report) by an independent accounting firm reasonably acceptable to Agent and (D)

(ii) prior to the consummation of such Acquisition, executed counterparts of the respective acquisition agreement and copies of all other material agreements, documents, consents and approvals pursuant to which such Acquisition is to be consummated;

(iii) at least two (2) Business Days prior to the consummation thereof (or such shorter period as Agent may accept), a certificate of a Responsible Officer of the Borrower Representative demonstrating, on a pro forma basis after giving effect to the consummation of such Acquisition calculated as of the last day of the most recent Fiscal Quarter preceding the date on which the Acquisition is consummated for which financial statements have been delivered that the Consolidated Total Net Leverage Ratio does not exceed the maximum Consolidated Total Net Leverage Ratio permitted under Section 7.1, less 0.25x, as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered (or were required to have been delivered) under Section 5.1; and

(iv) at least two (2) Business Days prior to the consummation thereof (or such shorter period as Agent may accept), if involving the acquisition of Real Estate and to the extent required by Agent, Environmental Assessments and other environmental audits or investigations in each case satisfactory to Agent.

(b) such Acquisition shall not be hostile and have been approved by the board of directors (or other similar body) of the Target;

(c) no Default or Event of Default shall exist at the time of the consummation of such Acquisition; provided, solely with respect to (i) a Limited Condition Acquisition funded by an Incremental Term Loan, the Persons providing such Incremental Term Loan may agree to a "Funds Certain Provision" that does not impose as a condition to funding thereof that no Default or Event of Default (other than under Section 8.1(a), Section 8.1(f) or Section 8.1(g), none of which shall exist at the time of execution of the applicable Limited Condition Acquisition Agreement or the date of consummation of such Limited Condition Acquisition) exists at the time such Limited Condition Acquisition is consummated; and

(d) the total consideration paid or payable (including all Indebtedness incurred, assumed and/or reflected on a consolidated balance sheet of the Credit Parties and their Subsidiaries after giving effect to such Acquisition and the maximum amount of all deferred payments, including Contingent Acquisition Obligations) (such amounts, collectively, the "**Acquisition Consideration**") for all Acquisitions (including Acquisitions described in clause (ii) below) consummated during the term of this Agreement shall not exceed \$70,000,000 in the aggregate for all such Acquisitions and (ii) for all Acquisitions of the Stock of a Target not organized under the laws of any State, or of a Target substantially all of the Property of which is not located in States, in the United States or the District of Columbia, or of a Target that will not otherwise be a Guarantor, or of Property which is not located within the United States or that will otherwise not become Property of a Guarantor, in each case with respect to this clause (ii) consummated during the term of this Agreement, shall not exceed \$15,000,000 in the aggregate for all such Acquisitions;

(e) the Consolidated EBITDA of such Target shall exceed \$0.00 at the time of the consummation of such Acquisition;

(f) the Credit Parties shall comply with the requirements of Section 5.13 with respect to any property, assets or business acquired in such Acquisition required to become part of the Collateral and any newly formed or acquired Subsidiary that is required to become a Guarantor; and

(g) immediately after giving effect to such Acquisition, the Credit Parties shall be in compliance with Section 6.9.

"**Permitted Liens**" as defined in Section 6.1.

"**Permitted Refinancing**" means Indebtedness constituting a refinancing or extension of Indebtedness permitted under Section 6.5(b) and 6.5(c) that:

(a) has an aggregate outstanding principal amount not greater than the aggregate principal amount of the Indebtedness being refinanced or extended, except by an amount equal to the unpaid accrued interest and premium thereon, defeasance costs and other reasonable amounts paid and fees and expenses incurred in connection therewith;

(b) has a Weighted Average Life to Maturity (measured as of the date of such refinancing or extension) and maturity no shorter than that of the Indebtedness being refinanced or extended;

- (c) is not entered into as part of a sale leaseback transaction;
- (d) is not secured by a Lien on any assets other than the collateral securing the Indebtedness being refinanced or extended;
- (e) the obligors of which are the same as the obligors of the Indebtedness being refinanced or extended;
- (f) is payment and/or lien subordinated to the Obligations at least to the same extent and in the same manner as the Indebtedness being refinanced or extended; and
- (g) is otherwise on terms no less favorable to the Credit Parties and their Subsidiaries, taken as a whole, than those of the Indebtedness being refinanced or extended; provided, however, that notwithstanding this clause (g), modifications to the interest rate applicable thereto shall be permitted if such modified interest rates are on market terms for similar refinancings of similar debt obligations as reasonably determined by the Borrowers and Agent.

“**Person**” means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

“**Pharma Laws**” means all applicable Requirements of Law relating to the procurement, development, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, sale, or promotion of any drug, medical device, food, dietary supplement, or other product (including, without limitation, any ingredient or component of the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) and similar state and foreign laws, controlled substances laws, pharmacy laws, or consumer product safety laws.

“**Prefunded Capital Expenditures Basket**” means, as of any date of determination, an amount equal to (a) \$80,000,000, minus (b) any Consolidated Capital Expenditures excluded from the calculation of Consolidated Unfinanced Cash Capital Expenditures pursuant to clause (b) of the definition thereof prior to such date, minus (c) the aggregate amount of all Investments made in cash (other than Investments funded with the proceeds of indebtedness excluding drawings under the Revolving Loan Commitments or any other revolving credit facility) on or after the Closing Date and prior to such date of determination. Borrower Representative shall provide a calculation of the Prefunded Capital Expenditures Basket as part of each Compliance Certificate delivered with quarterly financial statements.

“**Prior Indebtedness**” means the Indebtedness and obligations specified on Schedule 1.1 hereto.

“**Private Side Information**” as defined in Section 10.10(a)(iii).

“**Pro Forma Acquisition Adjustments**” as defined in the definition of Pro Forma Target EBITDA.

“**Pro Forma Target EBITDA**” means, with respect to any Target, EBITDA of such Target for the most recent twelve (12) month period preceding the acquisition thereof, adjusted by verifiable expense reductions, including reductions in excess owner compensation, if any, calculated a on month by month basis, to the extent such adjustments (collectively, “**Pro Forma Acquisition Adjustments**”) (a) are expected to be realized within twelve (12) months following the acquisition of such Target, (b) are certified as such in a certificate of a Responsible Officer of the Borrower Representative describing such reductions in reasonable detail, and (c) do not exceed in the aggregate for all Permitted Acquisitions 15% of Consolidated Adjusted EBITDA in any four consecutive Fiscal Quarter periods (calculated prior to such

giving effect to such adjustments), in each case calculated by the Borrower Representative; provided that the aggregate amount of all Pro Forma Acquisition Adjustments and Non-Recurring Expenses taken into account in the calculation of Consolidated Adjusted EBITDA during any measurement period shall not exceed twenty-five percent (25%) of Consolidated Adjusted EBITDA calculated after the add-back or adjustment for any such item.

“Products” means any item or any service that is designed, created, manufactured, managed, performed, or otherwise used, offered, or handled by or on behalf of the Credit Parties or any of their Subsidiaries.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

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

“Public Lender” as defined in Section 10.10(a)(i).

“Qualified ECP Guarantor” means, in respect of any Swap Obligation under a Secured Rate Contract, each Credit Party that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation under a Secured Rate Contract or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Rate Contracts” means swap agreements (as such term is defined in Section 101 of the Bankruptcy Code) designed to provide protection against fluctuations in interest or currency exchange rates and commodity prices and any other agreements or arrangements designed to provide such protection.

“Real Estate” means any real property owned, leased, subleased or otherwise operated or occupied by any Credit Party or any Subsidiary of any Credit Party.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not LIBOR, the time determined by the Agent in its reasonable discretion.

“Register” as defined in Section 2.4(b).

“Regulatory Matters” means, collectively, activities and Products that are subject to Pharma Laws and Regulatory Permits.

“Regulatory Permits” means all Permits and exemptions issued or allowed by any Governmental Authority (including but not limited to new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, device pre-market approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, and wholesale distributor permits) held by, or applied by contract to, any Credit Party or any of its Subsidiaries, that are required for the research, development, manufacture, distribution, marketing, storage, transportation, use and sale of the Products of any Credit Party or any of its Subsidiaries.

“**Rejection Notice**” as defined in Section 2.8(f).

“**Related Persons**” means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor (including those retained in connection with the satisfaction or attempted satisfaction of any condition set forth in Article III) and other consultants and agents of or to such Person or any of its Affiliates.

“**Releases**” means any release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

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

“**Replacement Lender**” as defined in Section 10.20.

“**Required Lenders**” means at any time (a) Lenders then holding more than fifty percent (50%) of the sum of the Aggregate Revolving Loan Commitment then in effect plus the aggregate unpaid principal balance of the Term Loans then outstanding, or (b) if the Aggregate Revolving Loan Commitments and have terminated, Lenders then holding more than fifty percent (50%) of the sum of the aggregate unpaid principal amount of Loans (other than Swing Loans) then outstanding Letter of Credit Obligations, amounts of participations in Swing Loans and the principal amount of unparticipated portions of Swing Loans; provided that if there are two or more Lenders, then Required Lenders shall include at least two Lenders (Lenders that are Affiliates or Approved Funds of one another being considered as one Lender for purposes of this proviso). Such portion of the Aggregate Revolving Loan Commitment (or Revolving Loans, as applicable) and the sum of the aggregate unpaid principal amount of the Term Loans then outstanding, as applicable, held or deemed held by a Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders at any time.

“**Required Revolving Lenders**” means at any time (a) Lenders then holding more than fifty percent (50%) of the sum of the Aggregate Revolving Loan Commitments then in effect, or (b) if the Aggregate Revolving Loan Commitments have terminated, Lenders then holding more than fifty percent (50%) of the sum of the aggregate outstanding amount of Revolving Loans, outstanding Letter of Credit Obligations, amounts of participations in Swing Loans and the principal amount of unparticipated portions of Swing Loans; provided that if there are two or more Lenders, then Required Revolving Lenders shall include at least two Revolving Lenders (Lenders that are Affiliates or Approved Funds of one another being considered as one Revolving Lender for purposes of this proviso). Such portion of the Aggregate Revolving Loan Commitment (or Revolving Loans, as applicable) and the sum of the aggregate unpaid principal amount of the Revolving Loans then outstanding, as applicable, held or deemed held by a Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders at any time.

“**Requirement of Law**” means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its Property or Products or to which such Person or any of its Property or Products is subject.

“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, the president, the general counsel, the chief operating officer, or the chief regulatory officer of a Borrower or the Borrower Representative, as applicable, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer or the treasurer of a Borrower or the Borrower Representative, as applicable, or any other officer having substantially the same authority and responsibility.

“Restricted Debt Payments” as defined in Section 6.12.

“Restricted Payments” as defined in Section 6.8.

“Revolving Lender” means each Lender with a Revolving Loan Commitment (or if the Revolving Loan Commitments have terminated, who hold Revolving Loans or participations in Swing Loans or Letter of Credit Obligations).

“Revolving Loan” means a Loan made or deemed to have been made pursuant to Section 2.1(b), Section 2.1(c)(vi)(B), Section 2.1(d)(iii)(B) or pursuant to Incremental Revolving Loan Commitments or Extended Revolving Loan Commitments.

“Revolving Loan Commitment” means, with respect to each Revolving Lender, the commitment of such Revolving Lender to make Revolving Loans and acquire interests in Letter of Credit Obligations and Swing Loans, which initial commitments are set forth on Schedule 2.1(b) opposite such Lender’s name under the heading “Revolving Loan Commitments”, as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Revolving Lender pursuant to an Assignment, (ii) an amendment or joinder agreement with respect to an Incremental Revolving Loan Commitment, or (iii) an Extension with respect to Extended Revolving Loan Commitments.

“Revolving Note” means a promissory note of the Borrowers payable to a Lender in substantially the form of Exhibit 1.1(c) hereto, evidencing Indebtedness of the Borrowers under the Revolving Loan Commitment of such Lender.

“Revolving Termination Date” means the earlier to occur of: (a) August 4, 2026; and (b) the date on which the Aggregate Revolving Loan Commitment shall terminate in accordance with the provisions of this Agreement; provided that the reference to Revolving Termination Date with respect to Incremental Revolving Loan Commitments whose maturity has been established pursuant to Section 2.1(e) or Extended Revolving Loan Commitments whose maturity has been established pursuant to Section 10.1(f), as applicable, shall be the date to which such Revolving Termination Date shall have been so extended or such maturity date as so established.

“Sale” as defined in Section 10.9(b).

“Sanctioned Country” as defined in Section 4.22(a).

“Sanctions” as defined in Section 4.22(a).

“SDN List” as defined in Section 4.22(a).

“**S&P**” means Standard & Poor’s Rating Services.

“**Secured Cash Management Agreement**” means any Cash Management Agreement between any Credit Party and a Secured Cash Management Bank, in effect on the Closing Date or entered into thereafter, to the extent that (x) Capital One, National Association or any of its Affiliates is the Secured Cash Management Bank or (y) the Borrower Representative and such Secured Cash Management Bank have notified Agent in writing of the intent to include the obligations of such Credit Party arising under such Cash Management Agreement as Secured Cash Management Obligations, and such Secured Cash Management Bank shall have acknowledged and agreed to the terms contained herein applicable to Secured Cash Management Obligations, including the provisions of Sections 2.10, 9.13 and 10.24.

“**Secured Cash Management Bank**” means a Lender or an Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Cash Management Agreement) who has entered into a Cash Management Agreement with a Credit Party.

“**Secured Cash Management Obligation**” means, as to any Person, all obligations, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), of a Credit Party arising under any Secured Cash Management Agreement.

“**Secured Party**” means Agent, each Lender, each L/C Issuer, each other Indemnitee and each other holder of any Obligation of a Credit Party (including each Secured Swap Provider and each Secured Cash Management Bank).

“**Secured Rate Contract**” means any Rate Contract between a Credit Party and a Secured Swap Provider, in effect on the Closing Date or entered into thereafter, to the extent that (x) Capital One, National Association or any of its Affiliates is the Secured Swap Provider or (y) the Borrower Representative and such Secured Swap Provider have notified Agent in writing of the intent to include the obligations of such Credit Party arising under such Rate Contract as Secured Rate Contract Obligations, and such Secured Swap Provider shall have acknowledged and agreed to the terms contained herein applicable to Secured Rate Contract Obligations, including the provisions of Sections 2.10, 9.13 and 10.24.

“**Secured Rate Contract Obligations**” means as to any Person, all obligations, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), of a Credit Party arising under any Secured Rate Contract.

“**Secured Swap Provider**” means a Lender or an Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Rate Contract) who has entered into a Rate Contract with a Credit Party.

“**Settlement Date**” as defined in Section 2.11(b).

“**SOFR**” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Software**” means (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

“**Solvent**” means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets of such Person (both at fair value and present fair saleable value) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to pay all liabilities of such Person as such liabilities mature and (c) such Person does not have unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**Special Flood Hazard Area**” means an area that FEMA has designated as an area subject to special flood hazards, the current standard for which is at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year, as per the applicable flood maps.

“**SPV**” means any special purpose funding vehicle identified as such in a writing by any Lender to Agent.

“**Stock**” means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting; and (b) all securities convertible into or exchangeable for any other Stock and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any other Stock, whether or not presently convertible, exchangeable or exercisable.

“**Subordinated Indebtedness**” means any Indebtedness of any Credit Party or any Subsidiary of any Credit Party which is subordinated to the Obligations as to right and time of payment and as to other rights and remedies thereunder and having such subordination and other terms as are, in each case, reasonably satisfactory to Agent.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, association or other entity, the management of which is, directly or indirectly, controlled by, or of which an aggregate of more than fifty percent (50%) of the voting Stock is, at the time, owned or controlled directly or indirectly by, such Person or one or more Subsidiaries of such Person.

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

“**Swap Termination Value**” means, in respect of any one or more Rate Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Rate Contracts, (a) for any date on or after the date such Rate Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Rate Contracts, as determined

based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Rate Contracts (which may include a Lender or any Affiliate of a Lender).

“**Swingline Commitment**” means \$15,000,000.

“**Swing Lender**” means, each in its capacity as Swing Lender hereunder, Capital One or, upon the resignation of Capital One as Agent hereunder, any Lender (or Affiliate or Approved Fund of any Lender) that agrees, with the approval of Agent (or, if there is no such successor Agent, the Required Lenders) and the Borrower Representative, to act as the Swing Lender hereunder.

“**Swing Loan**” as defined in Section 2.1(d)(i).

“**Swingline Note**” means a promissory note of the Borrowers payable to the Swing Lender, in substantially the form of Exhibit 1.1(c) hereto, evidencing the Indebtedness of the Borrowers to the Swing Lender resulting from the Swing Loans made to the Borrowers by the Swing Lender.

“**Swingline Request**” as defined in Section 2.1(d)(ii).

“**Target**” means any other Person or business unit or asset group of any other Person acquired or proposed to be acquired in an Acquisition.

“**Tax Affiliate**” means, (a) each Borrower and its Subsidiaries, (b) each other Credit Party and (c) any Affiliate of a Borrower with which such Borrower files or is eligible to file consolidated, combined or unitary Tax returns.

“**Tax Return**” as defined in Section 4.10.

“**Taxes**” as defined in Section 11.1(a).

“**Term Lender**” means each Lender who holds Term Loans.

“**Term Loan**” means any term loan made hereunder pursuant to Section 2.1(a) (including the initial Term Loans funded on the Closing Date), including, unless the context shall otherwise require, any Incremental Term Loan and any Extended Term Loan.

“**Term Loan Commitment**” means, with respect to each Lender, such Lender’s Term Loan Commitment as initially set forth on Schedule 2.1(a) hereto and as may be amended to reflect Assignments and as such amount may be reduced or increased pursuant to this Agreement. Unless the context shall otherwise require, the term “Term Loan Commitments” shall include any Incremental Term Loan Commitment of such Lender as set forth in any amendment under Section 2.1(e), and any commitment to extend Term Loans of such Lender under Section 10.1(f).

“**Term Loan Maturity Date**” means August 4, 2026.

“**Term Note**” means a promissory note of the Borrowers payable to a Lender, in substantially the form of Exhibit 1.1(c) hereto, evidencing the Indebtedness of the Borrowers to such Lender resulting from the Term Loan made to the Borrowers by such Lender or its predecessor(s).

“**Title IV Plan**” means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has any obligation or Liabilities (including any contingent or secondary Liabilities).

“**Trade Date**” as defined in Section 10.9(i).

“**Trade Secrets**” means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in trade secrets.

“**Trademark**” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordations thereof and all applications in connection therewith.

“**UCC**” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect from time to time in the State of New York.

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

“**UK Subsidiary**” means any Subsidiary of a Borrower that is incorporated, formed or otherwise organized under the laws of England and Wales.

“**Unfunded Benefit Liabilities**” of any Title IV Plan means the excess of a Title IV Plan’s benefit liabilities under Section 4001(a)(16) of ERISA over the current value of such Title IV Plan’s assets, determined in accordance with the assumptions used for funding the Title IV Plan pursuant to Section 412 of the Code for the applicable plan year.

“**United States**” and “**U.S.**” each means the United States of America.

“**Unused Commitment Fee**” as defined in Section 2.9(b).

“**U.S. Lender Party**” means each of Agent, each Lender, each L/C Issuer, each SPV and each participant, in each case that is a United States person as defined in Section 7701(a)(30) of the Code.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56.

“**USD LIBOR**” means the London interbank offered rate for Dollars.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness 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 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 Indebtedness; provided that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended, the effects of any prepayments made on such Indebtedness prior to the date of the applicable extension shall be disregarded.

“**Wholly-Owned Subsidiary**” of a Person means any Subsidiary of such Person, all of the Stock of which (other than directors’ qualifying shares required by law) are owned by such Person, either directly or through one or more Wholly-Owned Subsidiaries of such Person.

“**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.

“**Yield Differential**” as defined in Section 2.1(e)(iii)(B).

1.2 Other Interpretive Provisions.

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement or in any other Loan Document shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meanings of defined terms shall be equally applicable to the singular and plural forms of the defined terms. Terms (including uncapitalized terms) not otherwise defined herein and that are defined in the UCC shall have the meanings therein described.

(b) The Agreement. The words “**hereof**”, “**herein**”, “**hereunder**” and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document; and subsection, section, schedule and exhibit references are to this Agreement or such other Loan Documents unless otherwise specified.

(c) Certain Common Terms. The term “**documents**” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “**including**” is not limiting and means “including without limitation.”

(d) Performance; Time. Whenever any performance obligation hereunder or under any other Loan Document (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. For the avoidance of doubt, the initial payments of interest and fees relating to the Obligations under the Loan Documents (other than amounts due on the Closing Date) shall be due and payable on the last day of the first month or quarter, as applicable, following the entry of the Obligations onto the operations systems of Agent, but in no event later than the last day of the second month or

quarter, as applicable, following the Closing Date. In the computation of periods of time from a specified date to a later specified date, the word “**from**” means “from and including”; the words “**to**” and “**until**” each mean “to but excluding”, and the word “**through**” means “to and including.” All references to the time of day shall be a reference to New York time. If any provision of this Agreement or any other Loan Document refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein or in any other Loan Document, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation may be made by using either the common or public name thereof or a specific cite reference and, except as otherwise provided with respect to FATCA, are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Divisions. For all purposes under the Loan Documents, in connection with any Division: (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.3 Accounting Terms and Principles.

All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. No change in the accounting principles used in the preparation of any financial statement hereafter adopted by Amphastar shall be given effect for purposes of measuring compliance with any provision of Article VI or VII, calculating the Applicable Margin or otherwise determining any relevant ratios and baskets which govern whether any action is permitted hereunder unless the Borrowers, Agent and the Required Lenders agree to modify such provisions to reflect such changes in GAAP and, unless such provisions are modified, all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, 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 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other Liabilities of any Credit Party or any Subsidiary of any Credit Party at “fair value”, (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard

having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof and (iii) the effects of Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) on capital lease and debt obligations. A breach of a financial covenant contained in Article VII shall be deemed to have occurred as of the last day of any specified measurement period, regardless of when the financial statements reflecting such breach are delivered to Agent.

For purposes of determining pro forma compliance with any financial covenant as of any date prior to the first date on which such financial covenant is to be tested hereunder, the level of any such financial covenant shall be deemed to be the covenant level for such first test date.

If the availability of Indebtedness under this Agreement, or other incurrence of Indebtedness in compliance with this Agreement, is subject to a maximum leverage ratio, then, solely for the purposes of determining such availability or compliance, the cash proceeds of such Indebtedness, shall not be included in the calculation, if applicable, of cash or cash equivalents included in the determination of such leverage ratio.

1.4 Payments. Agent may set up standards and procedures to determine or redetermine the equivalent in Dollars of any amount expressed in any currency other than Dollars and otherwise may, but shall not be obligated to, rely on any determination made by any Credit Party or any L/C Issuer. Any such determination or redetermination by Agent shall be conclusive and binding for all purposes, absent manifest error. No determination or redetermination by any Secured Party or any Credit Party and no other currency conversion shall change or release any obligation of any Credit Party or of any Secured Party (other than Agent and its Related Persons) under any Loan Document, each of which agrees to pay separately for any shortfall remaining after any conversion and payment of the amount as converted. Agent may round up or down, and may set up appropriate mechanisms to round up or down, any amount hereunder to nearest higher or lower amounts and may determine reasonable *de minimis* payment thresholds.

1.5 Limited Condition Acquisitions.

(a) In the case of (i) the incurrence of any Indebtedness (other than Indebtedness under the Revolving Loan Commitment or any Incremental Facility, which shall remain subject to the terms and conditions thereof with respect to the impact, if any, of any Limited Condition Acquisition) or Liens or the making of any Investments (other than a Permitted Acquisition which shall remain subject to the terms and conditions thereof with respect to the impact, if any, of any Limited Condition Acquisition) or consolidations, mergers or other fundamental changes pursuant to Section 6.3, in each case, in connection with a Limited Condition Acquisition or (ii) determining compliance with representations and warranties or the occurrence of any Default or Event of Default (other than a Default or Event of Default under Section 8.1(a), Section 8.1(f) or Section 8.1(g)), in each case, in connection with a Limited Condition Acquisition (other than for purposes of the borrowing of Indebtedness under the Revolving Loan Commitment or any Incremental Facility, each of which shall remain subject to the terms and conditions thereof with respect to the impact, if any, of any Limited Condition Acquisition), at the Borrowers' option, the relevant ratios and baskets and whether any such action is permitted hereunder shall be determined as of the date a definitive acquisition agreement for such Limited Condition Acquisition (a "**Limited Condition Acquisition Agreement**") is entered into, and calculated as if such Limited Condition Acquisition (and any other pending Limited Condition Acquisition) and other pro forma events in connection therewith (and in connection with any other pending Limited Condition Acquisition), including the incurrence of Indebtedness, were consummated on

such date; provided that if the Borrowers have made such an election, then in connection with the calculation of any ratio or basket with respect to the incurrence of any other Indebtedness (other than Indebtedness under the Revolving Loan Commitment or any Incremental Facility, which shall remain subject to the terms and conditions thereof with respect to the impact, if any, of any Limited Condition Acquisition) or Liens, or the making of any other Investments, Restricted Payments, Restricted Debt Payments, Dispositions, the making of any Investments or consolidations, mergers or other fundamental changes pursuant to Section 6.3 on or following such date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the Limited Condition Acquisition Agreement for such Limited Condition Acquisition is terminated, any such ratio or basket shall be calculated (and tested) on a pro forma basis assuming such Limited Condition Acquisition (and any other pending Limited Condition Acquisition) and other pro forma events in connection therewith (and in connection with any other pending Limited Condition Acquisition), including any incurrence of Indebtedness, both have and have not been consummated.

(b) Notwithstanding anything set forth herein to the contrary, any determination in connection with a Limited Condition Acquisition of compliance with representations and warranties or as to the occurrence or absence of any Default or Event of Default hereunder as of the date the applicable Limited Condition Acquisition Agreement (rather than the date of consummation of the applicable Limited Condition Acquisition), shall not be deemed to constitute a waiver of or consent to any breach of representations and warranties hereunder or any Default or Event of Default hereunder that may exist at the time of consummation of such Limited Condition Acquisition.

ARTICLE II

THE CREDITS

2.1 Amounts and Terms of Commitments.

(a) The Term Loan.

(i) Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, each Lender with a Term Loan Commitment severally and not jointly agrees to lend to the Borrowers on the Closing Date, the amount set forth on Schedule 2.1(a) opposite such Lender's name under the heading "Term Loan Commitment" (such amount being referred to herein as such Lender's "Term Loan Commitment"). Amounts borrowed under this Section 2.1(a)(i) are referred to as the initial "Term Loan."

(ii) reserved.

(iii) Amounts borrowed as a Term Loan which are repaid or prepaid may not be reborrowed.

(b) The Revolving Credit. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, each Revolving Lender severally and not jointly agrees to make Loans to the Borrowers (each such Loan and each Incremental Revolving Loan (if any), a "**Revolving Loan**") from time to time on any Business Day during the period from the Closing Date through the Final Availability Date, in an aggregate amount not to exceed at any time outstanding such Lender's Revolving

Loan Commitment, which Revolving Loan Commitments, as of the Closing Date, are set forth on Schedule 2.1(b) opposite such Lender's name under the heading "Revolving Loan Commitments"; provided, however, that, after giving effect to any Borrowing of Revolving Loans, the aggregate principal amount of all outstanding Revolving Loans shall not exceed the Maximum Revolving Loan Balance. Subject to the other terms and conditions hereof, amounts borrowed under this Section 2.1(b) may be repaid and reborrowed from time to time. The "**Maximum Revolving Loan Balance**" from time to time will be the Aggregate Revolving Loan Commitment then in effect, less the sum of (I) the aggregate amount of Letter of Credit Obligations plus (II) the aggregate principal amount of outstanding Swing Loans. If at any time the then outstanding principal balance of Revolving Loans exceeds the Maximum Revolving Loan Balance, then the Borrowers shall immediately prepay outstanding Revolving Loans in an amount sufficient to eliminate such excess.

(c) Letters of Credit.

(i) Conditions. On the terms and subject to the conditions contained herein, the Borrower Representative may request that one or more L/C Issuers Issue, in accordance with such L/C Issuers' usual and customary business practices, and for the account of any Credit Party, Letters of Credit (denominated in Dollars) from time to time on any Business Day during the period from the Closing Date through the earlier of (x) seven (7) days prior to the date specified in clause (a) of the definition of Revolving Termination Date and (y) the date on which the Aggregate Revolving Loan Commitment shall terminate in accordance with the provisions of this Agreement; provided, however, that no L/C Issuer shall Issue any Letter of Credit upon the occurrence of any of the following or, if after giving effect to such Issuance:

(A) Availability would be less than zero, or (ii) the Letter of Credit Obligations for all Letters of Credit would exceed \$15,000,000 (the "**L/C Sublimit**");

(B) the expiration date of such Letter of Credit (i) is not a Business Day, (ii) is more than one year after the date of Issuance thereof or (iii) is later than seven (7) days prior to the date specified in clause (a) of the definition of Revolving Termination Date; provided, however, that any Letter of Credit with a term not exceeding one year may provide for its renewal for additional periods not exceeding one year as long as (x) each Borrower and such L/C Issuer have the option to prevent such renewal before the expiration of such term or any such period and (y) neither such L/C Issuer nor any Borrower shall permit any such renewal to extend such expiration date beyond the date set forth in clause (iii) above; provided further that notwithstanding the foregoing, Agent and the L/C Issuer, in their respective sole discretion, may agree to extend such Letter of Credit beyond the date set forth in clause (iii) above upon the Borrowers either (A) delivering to Agent for the benefit of the L/C Issuer cash equal to 105% (or such greater percentage as the L/C Issuer may require in the case of any Letter of Credit with an expiration date later than one year after the date of providing such cash collateral) of the sum of (1) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (2) the aggregate principal amount of all L/C Reimbursement Obligations outstanding at such time with respect to such Letter of Credit that have matured, in each instance, on and as of the date of such extension for deposit in a cash collateral account which cash collateral account will be held as a pledged cash collateral account and applied to reimbursement of all

drafts submitted under such outstanding Letter of Credit or (B) delivering to the L/C Issuer on the date of such extension one or more letters of credit for the benefit of the L/C Issuer, issued by a bank reasonably acceptable to the L/C Issuer in its sole discretion, each in form and substance reasonably acceptable to the L/C Issuer in its sole discretion, and in an amount equal to the sum of (1) and (2) above; or

(C) (i) any fee due in connection with, and on or prior to, such Issuance has not been paid, (ii) such Letter of Credit is requested to be Issued in a form that is not acceptable to such L/C Issuer or (iii) such L/C Issuer shall not have received, each in form and substance reasonably acceptable to it and duly executed by the Borrower Representative on behalf of the Credit Parties, the documents that such L/C Issuer generally uses in the ordinary course of business for the Issuance of letters of credit of the type of such Letter of Credit (collectively, the “**L/C Reimbursement Agreement**”).

For each Issuance, the applicable L/C Issuer may, but shall not be required to, determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived in connection with the Issuance of any Letter of Credit; provided, however, that no Letters of Credit shall be Issued during the period starting on the first Business Day after the receipt by such L/C Issuer of notice from Agent or the Required Revolving Lenders that any condition precedent contained in Section 3.2 is not satisfied and ending on the date all such conditions are satisfied or duly waived.

Notwithstanding anything else to the contrary herein, if any Lender is a Defaulting Lender, no L/C Issuer shall be obligated to Issue any Letter of Credit unless (w) the Defaulting Lender has been replaced in accordance with Section 10.9 or 10.20, (x) the Letter of Credit Obligations of such Defaulting Lender have been cash collateralized, (y) the Revolving Loan Commitments of the other Lenders have been increased by an amount sufficient to satisfy Agent that all future Letter of Credit Obligations will be covered by all Revolving Lenders that are not Defaulting Lenders, or (z) the Letter of Credit Obligations of such Defaulting Lender have been reallocated to other Revolving Lenders in a manner consistent with Section 2.11(e)(ii).

(ii) Notice of Issuance. The Borrower Representative shall give the relevant L/C Issuer and Agent a notice of any requested Issuance of any Letter of Credit, which shall be effective only if received by such L/C Issuer and Agent not later than 2:00 p.m. on the third Business Day prior to the date of such requested Issuance. Such notice shall be made in a writing or Electronic Transmission substantially in the form of Exhibit 2.1(c) duly completed or in any other written form acceptable to such L/C Issuer (an “**L/C Request**”).

(iii) Reporting Obligations of L/C Issuers. Each L/C Issuer agrees to provide Agent, in form and substance reasonably satisfactory to Agent, each of the following on the following dates: (A) (i) on or prior to any Issuance of any Letter of Credit by such L/C Issuer, (ii) immediately after any drawing under any such Letter of Credit or (iii) immediately after any payment (or failure to pay when due) by any Borrower of any related L/C Reimbursement Obligation, notice thereof, which shall contain a reasonably detailed description of such Issuance, drawing or payment and Agent shall provide copies of such notices to each Revolving Lender reasonably promptly after receipt thereof; (B) upon the request of Agent (or any Revolving Lender through Agent), copies of any Letter of Credit Issued by such L/C Issuer and any related L/C Reimbursement Agreement

and such other documents and information as may reasonably be requested by Agent; and (C) on the first Business Day of each calendar week, a schedule of the Letters of Credit Issued by such L/C Issuer, in form and substance reasonably satisfactory to Agent, setting forth the Letter of Credit Obligations for such Letters of Credit outstanding on the last Business Day of the previous calendar week.

(iv) Acquisition of Participations. Upon any Issuance of a Letter of Credit in accordance with the terms of this Agreement resulting in any increase in the Letter of Credit Obligations, each Revolving Lender shall be deemed to have acquired, without recourse or warranty, an undivided interest and participation in such Letter of Credit and the related Letter of Credit Obligations in an amount equal to its Commitment Percentage of such Letter of Credit Obligations.

(v) Reimbursement Obligations of the Borrowers. The Borrowers agree to pay to the L/C Issuer of any Letter of Credit, or to Agent for the benefit of such L/C Issuer, each L/C Reimbursement Obligation owing with respect to such Letter of Credit no later than the first Business Day after the Borrowers or the Borrower Representative receive notice from such L/C Issuer or from Agent that payment has been made under such Letter of Credit or that such L/C Reimbursement Obligation is otherwise due (the “**L/C Reimbursement Date**”) with interest thereon computed as set forth in clause (A) below. In the event that any L/C Reimbursement Obligation is not repaid by the Borrowers as provided in this clause (v) (or any such payment by the Borrowers is rescinded or set aside for any reason), such L/C Issuer shall promptly notify Agent of such failure (and, upon receipt of such notice, Agent shall notify each Revolving Lender) and, irrespective of whether such notice is given, such L/C Reimbursement Obligation shall be payable by the Borrowers on demand with interest thereon computed (A) from the date on which such L/C Reimbursement Obligation arose to the L/C Reimbursement Date, at the interest rate applicable during such period to Revolving Loans that are Base Rate Loans and (B) thereafter until payment in full, at the interest rate specified in Section 2.3(c) to past due Revolving Loans that are Base Rate Loans (regardless of whether or not an election is made under such Section).

(vi) Reimbursement Obligations of the Revolving Lenders.

(A) Upon receipt of the notice described in clause (v) above from Agent, each Revolving Lender shall pay to Agent for the account of such L/C Issuer its Commitment Percentage of such Letter of Credit Obligations (as such amount may be increased pursuant to Section 2.11(e)(ii)).

(B) By making any payment described in clause (A) above (other than during the continuation of an Event of Default under Section 8.1(f) or 8.1(g)), such Lender shall be deemed to have made a Revolving Loan to the Borrowers, which, upon receipt thereof by Agent for the benefit of such L/C Issuer, the Borrowers shall be deemed to have used in whole to repay such L/C Reimbursement Obligation. Any such payment that is not deemed a Revolving Loan shall be deemed a funding by such Lender of its participation in the applicable Letter of Credit and the Letter of Credit Obligation in respect of the related L/C Reimbursement Obligations. Such participation shall not otherwise be required to be funded. Following receipt by any L/C Issuer of any payment from any Lender pursuant to this clause (vi) with respect to any portion of any L/C Reimbursement Obligation, such L/C Issuer shall promptly pay to Agent, for the benefit of such

Lender, all amounts received by such L/C Issuer (or to the extent such amounts shall have been received by Agent for the benefit of such L/C Issuer, Agent shall promptly pay to such Lender all amounts received by Agent for the benefit of such L/C Issuer) with respect to such portion.

(vii) Obligations Absolute. The obligations of the Borrowers and the Revolving Lenders pursuant to clauses (iv), (v) and (vi) above shall be absolute, unconditional and irrevocable and performed strictly in accordance with the terms of this Agreement irrespective of (A) (i) the invalidity or unenforceability of any term or provision in any Letter of Credit, any document transferring or purporting to transfer a Letter of Credit, any Loan Document (including the sufficiency of any such instrument), or any modification to any provision of any of the foregoing, (ii) any document presented under a Letter of Credit being forged, fraudulent, invalid, insufficient or inaccurate in any respect or failing to comply with the terms of such Letter of Credit or (iii) any loss or delay, including in the transmission of any document, (B) the existence of any setoff, claim, abatement, recoupment, defense or other right that any Person (including any Credit Party) may have against the beneficiary of any Letter of Credit or any other Person, whether in connection with any Loan Document or any other Contractual Obligation or transaction, or the existence of any other withholding, abatement or reduction, (C) in the case of the obligations of any Revolving Lender, (i) the failure of any condition precedent set forth in Section 3.2 to be satisfied (each of which conditions precedent the Revolving Lenders hereby irrevocably waive) or (ii) any adverse change in the condition (financial or otherwise) of any Credit Party and (D) any other act or omission to act or delay of any kind of L/C Issuer, Agent, any Lender or any other Person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this clause (vii), constitute a legal or equitable discharge of any obligation of the Borrowers or any Revolving Lender hereunder. No provision hereof shall be deemed to waive or limit the Borrowers' right to seek repayment of any payment of any L/C Reimbursement Obligations from the L/C Issuer under the terms of the applicable L/C Reimbursement Agreement or applicable law.

Swing Loans.

(viii) Availability. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, the Swing Lender may, in its sole discretion, make Loans (each a "**Swing Loan**") available to the Borrowers under the Revolving Loan Commitments from time to time on any Business Day during the period from the Closing Date through the Final Availability Date in an aggregate principal amount at any time outstanding not to exceed its Swingline Commitment; provided, however, that the Swing Lender may not make any Swing Loan (x) to the extent that after giving effect to such Swing Loan, the aggregate principal amount of all Revolving Loans would exceed the Maximum Revolving Loan Balance (y) to the extent that after giving effect to such Swing Loan, the aggregate principal amount of all Revolving Loans and Swing Loans held by the Swing Lender (and if the Swing Lender is not also a Revolving Lender, by each of its Affiliates that is a Revolving Lender) would exceed the Revolving Loan Commitment of such Swing Lender (and such Affiliates, if any) and (z) during the period commencing on the first Business Day after it receives notice from Agent or the Required Revolving Lenders that one or more of the conditions precedent contained in Section 3.2 are not satisfied and ending when such conditions are satisfied or duly waived. In connection with the making of any Swing Loan, the Swing Lender may but shall not be required to determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived. Each Swing

Loan shall be a Base Rate Loan and must be repaid as provided herein, but in any event must be repaid in full on the Revolving Termination Date. Within the limits set forth in the first sentence of this clause (i), amounts of Swing Loans repaid may be reborrowed under this clause (i).

(ix) Borrowing Procedures. In order to request a Swing Loan, the Borrower Representative shall give to Agent a notice to be received not later than 2:00 p.m. on the day of the proposed Borrowing, which shall be made in a writing or in an Electronic Transmission substantially in the form of Exhibit 2.1(d) or in a writing in any other form acceptable to Agent duly completed (a “**Swingline Request**”). In addition, if any Notice of Borrowing of Revolving Loans requests a Borrowing of Base Rate Loans, the Swing Lender may, notwithstanding anything else to the contrary herein, make a Swing Loan to the Borrowers in an aggregate amount not to exceed such proposed Borrowing, and the aggregate amount of the corresponding proposed Borrowing shall be reduced accordingly by the principal amount of such Swing Loan. Agent shall promptly notify the Swing Lender of the details of the requested Swing Loan. Upon receipt of such notice and subject to the terms of this Agreement, the Swing Lender may make a Swing Loan available to the Borrowers by making the proceeds thereof available to Agent and, in turn, Agent shall make such proceeds available to the Borrowers on the date set forth in the relevant Swingline Request or Notice of Borrowing.

(x) Refinancing Swing Loans.

(A) The Swing Lender may at any time (and shall no less frequently than once each week) forward a demand to Agent (which Agent shall, upon receipt, forward to each Revolving Lender) that each Revolving Lender pay to Agent, for the account of the Swing Lender, such Revolving Lender’s Commitment Percentage of the outstanding Swing Loans (as such amount may be increased pursuant to Section 2.11(e)(ii)).

(B) Each Revolving Lender shall pay the amount owing by it to Agent for the account of the Swing Lender on the Business Day following receipt of the notice or demand therefor. Payments received by Agent after 1:00 p.m. may, in Agent’s discretion, be deemed to be received on the next Business Day. Upon receipt by Agent of such payment (other than during the continuation of any Event of Default under Section 8.1(f) or 8.1(g)), such Revolving Lender shall be deemed to have made a Revolving Loan to the Borrowers, which, upon receipt of such payment by the Swing Lender from Agent, the Borrowers shall be deemed to have used in whole to refinance such Swing Loan. In addition, regardless of whether any such demand is made, upon the occurrence of any Event of Default under Section 8.1(f) or 8.1(g), each Revolving Lender shall be deemed to have acquired, without recourse or warranty, an undivided interest and participation in each Swing Loan in an amount equal to such Lender’s Commitment Percentage of such Swing Loan. If any payment made by any Revolving Lender as a result of any such demand is not deemed a Revolving Loan, such payment shall be deemed a funding by such Lender of such participation. Such participation shall not be otherwise required to be funded. Upon receipt by the Swing Lender of any payment from any Revolving Lender pursuant to this clause (iii) with respect to any portion of any Swing Loan, the Swing Lender shall promptly pay over to such Revolving Lender all payments of principal (to the extent received after such payment by such Lender) and interest (to the extent accrued with respect to periods after such payment) on account of such Swing Loan received by the Swing Lender with respect to such portion.

(xi) Obligation to Fund Absolute. Each Revolving Lender's obligations pursuant to clause (iii) above shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including (A) the existence of any setoff, claim, abatement, recoupment, defense or other right that such Lender, any Affiliate thereof or any other Person may have against the Swing Lender, Agent, any other Lender or L/C Issuer or any other Person, (B) the failure of any condition precedent set forth in Section 3.2 to be satisfied or the failure of the Borrower Representative to deliver a Notice of Borrowing (each of which requirements the Revolving Lenders hereby irrevocably waive) and (C) any adverse change in the condition (financial or otherwise) of any Credit Party.

Incremental Facilities.

(xii) Requests. The Borrowers may, by written notice of the Borrower Representative to Agent (each, an "**Incremental Facility Request**"), request increases in the Term Loans or additional term loan facilities (each, an "**Incremental Term Loan Commitment**" and the term loans thereunder, an "**Incremental Term Loan**") and/or increases in the Revolving Loan Commitments (each, an "**Incremental Revolving Loan Commitment**" and the loans thereunder, "**Incremental Revolving Loans**"; each Incremental Term Loan Commitment and each Incremental Revolving Loan Commitment are each sometimes referred to herein individually as an "**Incremental Facility**" and collectively as the "**Incremental Facilities**") in Dollars in an aggregate amount not to exceed \$70,000,000. Such notice shall set forth (x) the amount of the Incremental Term Loan Commitment or Incremental Revolving Loan Commitment being requested, (y) the date (an "**Incremental Effective Date**") on which such Incremental Facility is requested to become effective (which, unless otherwise agreed by Agent, shall not be less than 10 Business Days nor more than 60 days after the date of such notice), and (z) if an Incremental Term Loan Commitment, whether the related Incremental Term Loan is to be a LIBOR Rate Loan or a Base Rate Loan (and, if a LIBOR Rate Loan, the Interest Period therefor).

(xiii) Conditions. No Incremental Facility shall become effective under this Section 2.1(e) unless, after giving effect to such Incremental Facility, the Loans to be made thereunder (and assuming, in the case of an Incremental Facility, that the entire amount of such Incremental Facility is funded), and the application of the proceeds therefrom:

(A) no Default or Event of Default shall exist at the time of funding; provided, solely with respect to an Incremental Term Loan the proceeds of which are intended to and shall be used to finance substantially contemporaneously a Limited Condition Acquisition, the Persons providing such Incremental Term Loan may agree to a "Funds Certain Provision" that does not impose as a condition to funding thereof that no Default or Event of Default exists at the time the Permitted Acquisition is consummated (other than an Event of Default under Section 8.1(a), 8.1(f) or 8.1(g)), in which event the condition shall be that no Default or Event of Default shall exist, in each case, on the date on which the Limited Condition Acquisition Agreement with respect to such Permitted Acquisition is executed and delivered by the parties thereto, and no Default or Event of Default under Section 8.1(a), Section 8.1(f) or Section 8.1(g) shall exist on the date of consummation of such Limited Condition Acquisition;

(B) no commitment of any Lender shall be increased without the consent of such Lender, and any Person providing an Incremental Term Loan Commitment or Incremental Revolving Loan Commitment that is not a Lender shall satisfy the requirements under Section 10.9(b) of a permitted assignee of the Term Loans or the Revolving Loan Commitments, as applicable;

(C) all representations and warranties under the Loan Documents are true and correct in all material respects (without duplication of any materiality qualifier contained therein);

(D) as of the last day of the most recent Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.1, the Consolidated Total Net Leverage Ratio recomputed on a pro forma basis shall not exceed 2.00 to 1.00; provided that in no event shall the proceeds from any such Incremental Facility be netted for purposes of calculating the foregoing Consolidated Total Net Leverage Ratio;

(E) proceeds of such Incremental Facility will be used for working capital and other general corporate purposes of Borrowers and their Subsidiaries (including for Consolidated Capital Expenditures, Permitted Acquisitions, other permitted Investments, Restricted Payments, repayments of Subordinated Indebtedness and any other use not prohibited by the Loan Documents);

(F) reserved; and

(G) Agent shall have received a certificate of a Responsible Officer of the Borrower Representative certifying as to the foregoing.

(xiv) Terms.

(A) The final maturity date of any Incremental Term Loan that is a separate Class shall be no earlier than the maturity date of the initial Term Loans and the Weighted Average Life to Maturity of any such Incremental Term Loan shall not be shorter than the Weighted Average Life to Maturity of the initial Term Loans.

(B) If the initial all-in yield (including interest rate margins, any interest rate floors, original issue discount and upfront fees (based on the lesser of a four-year average life to maturity or the remaining life to maturity), but excluding reasonable and customary arrangement, structuring and underwriting fees with respect to such Incremental Term Loan) applicable to any Incremental Term Loan exceeds by more than 0.50% per annum the corresponding all-in yield (determined on the same basis) applicable to the then outstanding Term Loans or Revolving Loans, (each, an “**Existing Facility**” and the amount of such excess above 0.50% per annum being referred to herein as the “**Yield Differential**”), then the Applicable Margin with respect to each Existing Facility, as the case may be, shall automatically be increased by the Yield Differential, effective upon the making of such Incremental Term Loan (it being agreed that to the extent the all-in-yield with respect to such Incremental Term Loan is greater than the all-in-yield of an Existing Facility solely as a result of a higher LIBOR floor, then the increased

interest rate applicable to an Existing Facility shall be effected solely by increasing the LIBOR floor applicable thereto).

(C) Each Incremental Term Loan shall have other terms (excluding pricing, fees, rate floors and optional prepayment or redemption terms as expressly set forth in this clause (iii)) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by Borrowers and Agent) to the lenders or holders providing such Incremental Term Loan, that those applicable to the then existing Term Loans (except to the extent such terms are (1) conformed (or added) in the Loan Documents for the benefit of the then existing Term Loans pursuant to an amendment thereto subject solely to the reasonable satisfaction of the Agent or (2) applicable solely to periods after the Latest Maturity Date applicable to the Obligations at the time of such incurrence or issuance).

(D) Any Incremental Revolving Loans shall be on the same terms (as amended from time to time) (including interest rate margins, any interest rate floors, original issue discount and upfront fees (based on the lesser of a four-year average life to maturity or the remaining life to maturity), but excluding reasonable and customary arrangement, structuring and underwriting fees with respect to such Incremental Revolving Loans) as, and pursuant to documentation applicable to, the initial Revolving Loans.

(xv) Required Amendments. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Facility, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence of such Incremental Facility and the Loans evidenced thereby, and any joinder agreement or amendment (each an “**Incremental Joinder Agreement**”) may without the consent of the other Lenders effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Agent and Borrowers, to effect the provisions of this Section 2.1(e) (including any amendments that are not adverse to the interests of any Lender that are made to effectuate changes necessary to enable any Incremental Term Loans that are intended to be of the same Class as the initial Term Loans made on the Closing Date to be of the same Class as such initial Term Loans, which shall include any amendments to Section 2.8(a) that do not reduce the ratable amortization received by each Lender thereunder). For the avoidance of doubt, this Section 2.1(e) shall supersede any provisions in Section 10.1. From and after each Incremental Effective Date, the Loans and Commitments established pursuant to this Section 2.1(e) shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the guarantees and security interests created by the applicable Collateral Documents. The Credit Parties shall take any actions reasonably required by Agent to ensure and/or demonstrate that the Liens and security interests granted by the applicable Collateral Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such new Loans and Commitments, including compliance with Section 5.13(c). Each of the parties hereto hereby agrees that Agent may, in consultation with the Borrower Representative, take any and all action as may be reasonably necessary to ensure that all Incremental Term Loans which are not separate Classes, when originally made, are included in each Borrowing of outstanding Term Loans on a pro rata basis. This may be accomplished by requiring each outstanding Borrowing of Term Loans that are LIBOR Rate Loans to be converted into a Borrowing of Term Loans that are Base Rate Loans on the date of each such Incremental Term Loan, or by allocating

a portion of each such Incremental Term Loan to each outstanding Borrowing of Term Loans that are LIBOR Rate Loans on a pro rata basis. Any conversion of LIBOR Rate Loans to Base Rate Loans required by the preceding sentence shall be subject to Section 11.4. If any Incremental Term Loan is to be allocated to an existing Interest Period for a Borrowing of LIBOR Rate Loans, then the interest rate thereon for such Interest Period shall be as set forth in the applicable Incremental Joinder Agreement. In addition, the scheduled amortization payments under Section 2.8(a) required to be made after the making of any Incremental Term Loans which are not separate Classes shall be ratably increased by the aggregate principal amount of such Incremental Term Loans for all Lenders on a pro rata basis to the extent necessary to avoid any reduction in the amortization payments to which the Term Lenders were entitled before such recalculation. Each of the parties hereto hereby agrees that Agent may, in consultation with the Borrower Representative, take any and all action as may be reasonably necessary to ensure that, upon the effectiveness of each Incremental Revolving Loan Commitment, (i) Revolving Loans made under such Incremental Revolving Loan Commitment are included in each Borrowing of outstanding Revolving Loans on a pro rata basis and (ii) the Lender providing each Incremental Revolving Loan Commitment shares ratably in the aggregate principal amount of all outstanding Revolving Loans, Swing Loans and Letter of Credit Obligations.

2.2 Evidence of Loans; Notes.

(a) The Term Loans made by any Lender are evidenced by this Agreement and, if requested by such Lender, a Note payable to such Lender in an amount equal to the unpaid balance of the Term Loans held by such Lender.

(b) The Revolving Loans and Swing Loans made by each Revolving Lender and the Swing Lender, respectively, are evidenced by this Agreement and, if requested by such Lender, a Note payable to such Lender in an amount equal to such Lender's Revolving Loan Commitment or Swingline Commitment.

2.3 Interest.

(a) Subject to Sections 2.3(c) and 2.3(d), each Loan shall bear interest on the outstanding principal amount thereof from the date when made, and all interest which is not paid when due shall bear interest, at a rate per annum equal to LIBOR or the Base Rate, as the case may be, plus the Applicable Margin; provided Swing Loans may not be LIBOR Rate Loans. Each determination of an interest rate by Agent shall be conclusive and binding on each Borrower and the Lenders in the absence of manifest error. All computations of fees and interest (other than interest accruing on Base Rate Loans) payable under this Agreement shall be made on the basis of a 360-day year and actual days elapsed. All computations of interest accruing on Base Rate Loans payable under this Agreement shall be made on the basis of a 365-day year (366 days in the case of a leap year) and actual days elapsed. Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(b) Interest on each Loan shall be paid in arrears on each Interest Payment Date. Interest shall also be paid on the date of any payment or prepayment of Term Loans in full and Revolving Loans on the Revolving Termination Date.

(c) While any Event of Default under Section 8.1(a), 8.1(f) or 8.1(g) exists, the Borrowers shall pay interest on (i) the past due principal amount of all Loans outstanding in the case of an Event of Default under Section 8.1(a) and (ii) on the principal amount of all Loans outstanding (whether or not past due) and past due interest thereon, if any, in the case of an Event of Default under Section 8.1(f) or (g), from the date of occurrence of such Event of Default, at a rate per annum which is determined by adding two percent (2.0%) per annum to the Applicable Margin then in effect for such Loans (and, as to past due interest, the Applicable Margin applicable to the principal on which such interest accrued) (plus the LIBOR or Base Rate, as the case may be). All such interest shall be payable in cash on demand of Agent or the Required Lenders.

(d) Anything herein to the contrary notwithstanding, the obligations of the Borrowers hereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event the Borrowers shall pay such Lender interest at the highest rate permitted by applicable law (“**Maximum Lawful Rate**”); provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, the Borrowers shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent, on behalf of Lenders, is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement.

2.4 Loan Accounts; Register.

(a) Agent, on behalf of the Lenders, shall record on its books and records the amount of each Loan made, the interest rate applicable, all payments of principal and interest thereon and the principal balance thereof from time to time outstanding. Agent shall deliver to the Borrower Representative on a monthly basis a loan statement setting forth such record for the immediately preceding calendar month. Such record shall, absent manifest error, be conclusive evidence of the amount of the Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so, or any failure to deliver such loan statement shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder (and under any Note) to pay any amount owing with respect to the Loans or provide the basis for any claim against Agent.

(b) Agent, acting as a non-fiduciary agent of the Borrowers solely for tax purposes and solely with respect to the actions described in this Section 2.4(b), shall establish and maintain at its address referred to in Section 10.2 (or at such other address as Agent may notify the Borrower Representative) (A) a record of ownership (the “**Register**”) in which Agent agrees to register by book entry the interests (including any rights to receive payment hereunder) of Agent, each Lender and each L/C Issuer in the Term Loans, Revolving Loans, Swing Loans, L/C Reimbursement Obligations and Letter of Credit Obligations, each of their obligations under this Agreement to participate in each Loan, Letter of Credit, Letter of Credit Obligations and L/C Reimbursement Obligations, and any assignment of any such interest, obligation or right and (B) accounts in the Register in accordance with its usual practice in which it shall record (1) the names and addresses of the Lenders and the L/C Issuers (and each change thereto pursuant to Sections 10.9 and 10.20), (2) the Commitments of each Lender, (3) the amount of each Loan and each funding of any participation described in clause (A) above, and for LIBOR Rate Loans, the Interest Period applicable thereto, (4) the amount of any principal or interest due and payable or paid, (5) the

amount of the L/C Reimbursement Obligations due and payable or paid in respect of Letters of Credit and (6) any other payment received by Agent from a Borrower or other Credit Party and its application to the Obligations under the Loan Documents.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Loans (including any Notes evidencing such Loans and, in the case of Revolving Loans, the corresponding obligations to participate in Letter of Credit Obligations and Swing Loans) and the L/C Reimbursement Obligations are registered obligations, the right, title and interest of the Lenders and the L/C Issuers and their assignees in and to such Loans or L/C Reimbursement Obligations, as the case may be, shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 2.4 and Section 10.9 shall be construed so that the Loans and L/C Reimbursement Obligations are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(d) The Credit Parties, Agent, the Lenders and the L/C Issuers shall treat each Person whose name is recorded in the Register as a Lender or L/C Issuer, as applicable, for all purposes of this Agreement. Information contained in the Register with respect to any Lender or any L/C Issuer shall be available for access by the Borrowers, the Borrower Representative, Agent, such Lender or such L/C Issuer during normal business hours and from time to time upon at least one Business Day’s prior notice. No Lender or L/C Issuer shall, in such capacity, have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender or L/C Issuer unless otherwise agreed by the Agent.

2.5 Procedure for Revolving Credit Borrowing

(a) Each Borrowing of a Revolving Loan shall be made upon the Borrower Representative’s irrevocable (subject to Section 11.5) written notice delivered to Agent substantially in the form of a Notice of Borrowing or in a writing in any other form acceptable to Agent, which notice must be received by Agent prior to 2:00 p.m. (i) on the date which is three (3) Business Days prior to the requested Borrowing date in the case of each LIBOR Rate Loan and (ii) on the date which is one (1) Business Day prior to the requested Borrowing date of each Base Rate Loan. Such Notice of Borrowing shall specify:

- (i) the amount of the Borrowing (which shall be in an aggregate minimum principal amount of \$100,000);
- (ii) the requested Borrowing date, which shall be a Business Day;
- (iii) whether the Borrowing is to be comprised of LIBOR Rate Loans or Base Rate Loans; and
- (iv) if the Borrowing is to be LIBOR Rate Loans, the Interest Period applicable to such Loans.

(b) Upon receipt of a Notice of Borrowing, Agent will promptly notify each Revolving Lender of such Notice of Borrowing and of the amount of such Lender’s Commitment Percentage of the Borrowing.

Unless Agent is otherwise directed in writing by the Borrower Representative, the proceeds of each requested Borrowing after the Closing Date will be made available to the Borrowers by Agent by wire transfer of such amount to the Borrowers pursuant to the wire transfer instructions specified on the signature page hereto.

2.6 Conversion and Continuation Elections

(a) The Borrowers shall have the option to (i) request that any Revolving Loan be made as a LIBOR Rate Loan, (ii) convert at any time all or any part of outstanding Loans (other than Swing Loans) from Base Rate Loans to LIBOR Rate Loans, (iii) convert any LIBOR Rate Loan to a Base Rate Loan, subject to Section 11.4 if such conversion is made prior to the expiration of the Interest Period applicable thereto, or (iv) continue all or any portion of any Loan as a LIBOR Rate Loan upon the expiration of the applicable Interest Period. Any such election must be made by Borrower Representative by 2:00 p.m. on the third Business Day prior to (1) the date of any proposed Loan which is to bear interest at LIBOR, (2) the end of each Interest Period with respect to any LIBOR Rate Loans to be continued as such, or (3) the date on which the Borrowers wish to convert any Base Rate Loan to a LIBOR Rate Loan for an Interest Period designated by the Borrower Representative in such election. If no election is received with respect to a LIBOR Rate Loan by 2:00 p.m. on the third Business Day prior to the end of the Interest Period with respect thereto, that LIBOR Rate Loan shall be converted to a Base Rate Loan at the end of its Interest Period. The Borrower Representative must make such election by notice to Agent in writing, including by Electronic Transmission. In the case of any conversion or continuation, such election must be made pursuant to a written notice (a “**Notice of Conversion/Continuation**”) substantially in the form of Exhibit 2.6 or in a writing in any other form acceptable to Agent. No Loan shall be made, converted into or continued as a LIBOR Rate Loan, if (x) an Event of Default has occurred and is continuing and Agent or Required Lenders have determined not to make or continue any Loan as a LIBOR Rate Loan as a result thereof or (y) Agent is or Required Lenders are stayed by the Bankruptcy Code from making such determination.

(b) Upon receipt of a Notice of Conversion/Continuation, Agent will promptly notify each Lender thereof. In addition, Agent will, with reasonable promptness, notify the Borrower Representative and the Lenders of each determination of LIBOR; provided that any failure to do so shall not relieve any Borrower of any liability hereunder or provide the basis for any claim against Agent. All conversions and continuations shall be made pro rata according to the respective outstanding principal amounts of the Loans held by each Lender with respect to which the notice was given.

(c) Notwithstanding any other provision contained in this Agreement, after giving effect to any Borrowing, or to any continuation or conversion of any Loans, there shall not be more than seven (7) different Interest Periods in effect; provided that after the establishment of any new Class of Loans pursuant to an Extension or an Incremental Facility, such number of Interest Periods shall increase by two (2) Interest Periods for each such new Class of Loans so established.

2.7 Optional Prepayments and Reductions in Revolving Loan Commitments

(a) Optional Prepayments Generally. The Borrowers may at any time upon at least two (2) Business Days’ (or such shorter period as is acceptable to Agent) prior written notice by the Borrower Representative to Agent, prepay the Loans in whole or in part in an amount greater

than or equal to \$100,000 (other than Revolving Loans and Swing Loans for which prior written notice is not required and for which no minimum shall apply), in each instance, without penalty or premium except as provided in Section 11.4. Optional partial prepayments of Revolving Loans shall be applied in accordance with Section 2.10(a). Optional partial prepayments of Term Loans shall be applied pro rata among each Class of Term Loans based upon the respective outstanding principal balances thereof, and then shall, subject to Section 2.10(a), be applied to scheduled installments thereof, if any, as specified by the Borrower Representative in such notice of prepayment; provided that the same order of application shall apply to each Class of Term Loan and, in the absence of such direction, in the manner set forth in Section 2.8(f).

(b) Reductions in Revolving Loan Commitments. Borrowers may at any time upon at least two (2) Business Days' (or such shorter period as is acceptable to Agent) prior written notice by the Borrower Representative to Agent permanently reduce the Aggregate Revolving Loan Commitment; provided that (i) such reductions shall be in an amount greater than or equal to \$1,000,000 and integral multiples of \$100,000 in excess thereof, and (ii) after giving effect to such reduction, Availability shall be not less than \$30,000,000. All reductions of the Aggregate Revolving Loan Commitment shall be allocated pro rata among all Lenders with a Revolving Loan Commitment. A permanent reduction of the Aggregate Revolving Loan Commitment shall not require a corresponding pro rata reduction in the L/C Sublimit or the Swingline Commitment; provided that the L/C Sublimit and/or the Swingline Commitment, as applicable, shall be permanently reduced by the amount thereof in excess of the Aggregate Revolving Loan Commitment.

(c) Notices. Notice of prepayment or commitment reduction pursuant to clauses (a) and (b) above shall not thereafter be revocable by the Borrowers or the Borrower Representative (unless such notice expressly conditions such prepayment upon consummation of a transaction which is contemplated to result in prepayment of the Loans, in which event such notice may be revocable or conditioned upon such consummation) and Agent will promptly notify each Lender thereof and of such Lender's Commitment Percentage of such prepayment or reduction. The payment amount specified in a notice of prepayment or reduction shall be due and payable on the date specified therein. Together with each prepayment under this Section 2.7, the Borrowers shall pay any amounts required pursuant to Sections 2.9 and 11.4.

2.8 Mandatory Prepayments of Loans and Commitment Reductions

(a) Scheduled Term Loan Payments. (i) The principal amount of the Term Loans funded on the Closing Date shall be paid in installments on the dates and in the respective amounts shown below:

<u>Date of Payment</u>	<u>Amount of Term Loan Payment</u>
December 31, 2021	\$437,500.00
March 31, 2022	\$437,500.00
June 30, 2022	\$437,500.00
September 30, 2022	\$437,500.00
December 30, 2022	\$437,500.00
March 31, 2023	\$437,500.00
June 30, 2023	\$437,500.00
October 2, 2023	\$437,500.00
December 29, 2023	\$875,000.00
April 1, 2024	\$875,000.00
July 1, 2024	\$875,000.00
September 30, 2024	\$875,000.00
December 31, 2024	\$875,000.00
March 31, 2025	\$875,000.00
June 30, 2025	\$875,000.00
September 30, 2025	\$875,000.00
December 31, 2025	\$1,312,500.00
March 31, 2026	\$1,312,500.00
June 30, 2026	\$1,312,500.00

The final installment of the Term Loans funded on the Closing Date shall be in an amount equal to the entire remaining principal balance of such Term Loans and shall be due and payable in full on the Term Loan Maturity Date.

(ii) Scheduled installments for any Incremental Term Loan or Extended Term Loan shall be as specified in the applicable amendment, Extension or joinder agreement.

(b) Revolving Loan. The Borrowers shall repay to the Lenders in full on the date specified in clause (a) of the definition of “Revolving Termination Date” the aggregate principal amount of the Revolving Loans and Swing Loans outstanding on the Revolving Termination Date.

(c) Asset Dispositions; Events of Loss. If a Credit Party or any Subsidiary of a Credit Party shall at any time or from time to time:

(ii) make a Disposition (other than sales or other dispositions expressly permitted under Sections 6.2(a), 6.2(c) through 6.2(l)); or

(iii) suffer an Event of Loss;

and the aggregate amount of the Net Proceeds received by the Credit Parties and their Subsidiaries in connection with such Disposition or Event of Loss and all other such Dispositions and Events of Loss occurring during the Fiscal Year exceeds \$1,000,000, then (A) the Borrower Representative shall promptly notify Agent of such proposed Disposition or Event of Loss (including the amount of the estimated Net Proceeds to be received by a Credit Party and/or such Subsidiary in respect thereof) and (B) promptly upon receipt by a Credit Party and/or such Subsidiary of the Net Proceeds of such Disposition or Event of Loss, the Borrowers shall deliver, or cause to be delivered, such excess Net Proceeds to Agent for distribution to the Lenders as a prepayment of the Loans, which prepayment shall be applied in accordance with Section 2.8(f) hereof. Notwithstanding the foregoing and provided no Event of Default has occurred and is continuing (other than an Event of Default that occurs after a Credit Party or a Subsidiary of a Credit Party has entered into a legally binding commitment pursuant to which it will make such reinvestment but only if such legally binding commitment is continuing and was entered into at a time when no Event of Default was continuing), such prepayment shall not be required to the extent a Credit Party or such Subsidiary reinvests the Net Proceeds of such Disposition or Event of Loss in productive assets (other than Inventory (except to the extent Inventory was subject to such an Event of Loss)) of a kind then used or usable in the business of a Borrower or such Subsidiary, within one hundred eighty (180) days after the date of such Disposition or Event of Loss, or enters into a binding commitment thereof within said one hundred eighty (180) day period and subsequently makes such reinvestment within an additional one hundred eighty (180) days thereafter; provided that the Borrower Representative notifies Agent of such Borrower’s or such Subsidiary’s intent to reinvest and of the completion of such reinvestment at the time such proceeds are received and when such reinvestment occurs, respectively.

(d) Incurrence of Debt. Immediately upon receipt by any Credit Party or any Subsidiary of any Credit Party of the Net Issuance Proceeds of the incurrence of Indebtedness (other than Net Issuance Proceeds from the incurrence of Indebtedness permitted hereunder), the Borrowers shall deliver, or cause to be delivered, to Agent an amount equal to such Net Issuance Proceeds for application to the Loans in accordance with Section 2.8(f).

(e) reserved.

(f) Application of Prepayments. Subject to Section 2.10 and except as may otherwise be set forth in any Extension Offer with respect to any Extended Term Loan, any prepayments pursuant to Section 2.8(c) or 2.8(d) shall be applied first to prepay the next four installments of each Class of Term Loan, if any, in direct order of maturity and then to prepay all remaining installments thereof (including the final payment due at maturity) pro rata against all such scheduled installments based upon the respective amounts thereof, second to prepay outstanding Swing Loans, third to prepay outstanding Revolving Loans without permanent reduction of the Aggregate Revolving Loan Commitment and fourth to cash collateralize Letters of Credit in an amount determined in accordance with Section 8.4. Amounts prepaid shall be applied first to any Base Rate Loans then outstanding and then to outstanding LIBOR Rate Loans with the shortest Interest Periods remaining. Together with each prepayment under this Section 2.8, the Borrowers shall pay any amounts required pursuant to Section 11.4 hereof.

(g) No Implied Consent. Provisions contained in this Section 2.8 for the application of proceeds of certain transactions shall not be deemed to constitute consent of the Lenders to transactions that are not otherwise permitted by the terms hereof or the other Loan Documents.

(h) Repatriation. Notwithstanding the foregoing, to the extent any or all of the Net Proceeds of any Disposition by, or Event of Loss of, a Foreign Subsidiary otherwise giving rise to a prepayment pursuant to Section 2.8(c) attributable to Foreign Subsidiaries, is prohibited or delayed by any applicable local Requirements of Law from being repatriated to the Borrowers or any Domestic Subsidiary (each, a “**Repatriation**”; with “**Repatriated**” having a correlative meaning) (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to take promptly all commercially reasonable actions required by such Requirements of Law to permit such Repatriation), or if the Borrower has determined in good faith that Repatriation of any such amount would reasonably be expected to have material adverse tax consequences with respect to Amphastar or its Subsidiaries, taking into account any foreign tax credit or benefit actually received in connection with such Repatriation, the portion of such Net Proceeds so affected will not be required to be applied to prepay Loans at the times provided in this Section 2.8; provided, that if and to the extent any such Repatriation ceases to be prohibited or delayed by applicable local Requirements of Law at any time during the one (1) year period immediately following the date on which the applicable mandatory prepayment pursuant to Section 2.8 was required to be made, an amount equal to the amount no longer prohibited or delayed from being Repatriated (such amount, the “**Excluded Prepayment Amount**”) shall promptly be paid by the Credit Parties to Agent for the Account of the Lenders, which payment shall be applied in accordance with Section 2.8(f). For the avoidance of doubt, the non-application of any such portion of the mandatory prepayment amount pursuant to this Section 1.8(i) shall not constitute a Default or an Event of Default. Any amount equal to any Excluded Prepayment Amount not required to be used to make a payment under the immediately preceding sentence shall, upon expiration of such one (1) year period, be used to prepay Indebtedness of such Foreign Subsidiaries (including intercompany Indebtedness), if any, with the balance to be used for working capital of such Foreign Subsidiaries.

2.9 Fees.

(a) Fees. The Borrowers shall pay to Agent, for Agent's own account or as otherwise provided therein, fees in the amounts and at the times set forth in (i) a letter agreement between the Borrowers and Agent dated of even date herewith (as amended, modified and/or supplemented from time to time in accordance with its terms, the "**Agent Fee Letter**") and (ii) a letter agreement among the Borrowers, Agent and the Lead Arrangers dated of even date herewith (as amended, modified and/or supplemented from time to time in accordance with its terms, the "**Arranger Fee Letter**", and together with the Agent Fee Letter, collectively, the "**Fee Letters**").

(b) Unused Commitment Fee. The Borrowers shall pay to Agent a fee (the "**Unused Commitment Fee**") for the account of each Revolving Lender in an amount equal to:

(i) the daily balance of the Revolving Loan Commitment of such Revolving Lender during the preceding calendar quarter, less

(ii) the sum of (x) the daily balance of all Revolving Loans held by such Revolving Lender plus (y) the daily amount of Letter of Credit Obligations held by such Revolving Lender, plus (z) in the case of the Swing Lender, the daily balance of all outstanding Swing Loans held by such Swing Lender, in each case, during the preceding calendar quarter; provided, in no event shall the amount computed pursuant to clauses (i) and (ii) with respect to the Swing Lender be less than zero,

(iii) multiplied by the Applicable Unused Commitment Fee per annum. The total Unused Commitment Fee paid by the Borrowers will be equal to the sum of all of the Unused Commitment Fees due to the Lenders, subject to Section 2.11(e)(vi). Such fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter following the date hereof. The Unused Commitment Fee provided in this Section 2.9(b) shall accrue at all times from and after the execution and delivery of this Agreement.

(c) Letter of Credit Fee. The Borrowers agree to pay to Agent for the ratable benefit of the Revolving Lenders, as compensation to such Lenders for Letter of Credit Obligations incurred hereunder, (i) without duplication of costs and expenses otherwise payable to Agent or Lenders hereunder or fees otherwise paid by the Borrowers, all reasonable and documented costs and expenses incurred by Agent or any Lender on account of such Letter of Credit Obligations, and (ii) for each calendar quarter during which any Letter of Credit Obligation shall remain outstanding, a fee (the "**Letter of Credit Fee**") in an amount equal to the product of the daily undrawn face amount of all Letters of Credit Issued, guaranteed or supported by risk participation agreements multiplied by a per annum rate equal to the Applicable Margin with respect to Revolving Loans which are LIBOR Rate Loans. Such fee shall be paid to Agent for the benefit of the Revolving Lenders in arrears, on the last Business Day of each calendar quarter and on the date on which all L/C Reimbursement Obligations have been discharged. In addition, the Borrowers shall pay to Agent, any L/C Issuer or any prospective L/C Issuer, as appropriate, on demand, such L/C Issuer's or prospective L/C Issuer's customary fees at then prevailing rates (which, in any event, shall include a fronting fee, payable to each L/C Issuer for its own account, which shall accrue at the then prevailing rate on the average daily amount available to be drawn under any Letters of Credit Issued and shall be payable on the last Business Day of each Fiscal Quarter and on the date on which all L/C Reimbursement Obligations have been discharged), without duplication of fees otherwise payable hereunder (including all per annum fees), charges and expenses of such L/C Issuer or prospective L/C Issuer in respect of the application for, and the Issuance, negotiation,

acceptance, amendment, transfer and payment of, each Letter of Credit or otherwise payable pursuant to the application and related documentation under which such Letter of Credit is Issued.

(d) reserved.

(e) All fees payable pursuant to this Section 2.9 shall be applied in accordance with Section 2.10(a).

2.10 Payments by the Borrowers

(a) All payments (including prepayments) to be made by each Credit Party on account of principal, interest, fees and other amounts required hereunder shall be made without set-off, recoupment, counterclaim or deduction of any kind, shall, except as otherwise expressly provided herein, be made to Agent and for the ratable account of the Persons holding the applicable Obligations at the address for payment specified in the signature page hereof in relation to Agent (or such other address, including wire instructions, as Agent may from time to time specify in accordance with Section 10.2), including payments utilizing the ACH system, and shall be made in Dollars and by wire transfer or ACH transfer in immediately available funds (which shall be the exclusive means of payment hereunder), no later than 1:00 p.m. on the date due. Any payment which is received by Agent later than 1:00 p.m. may in Agent's discretion be deemed to have been received on the immediately succeeding Business Day and any applicable interest or fee shall continue to accrue. Each Borrower and each other Credit Party hereby irrevocably waives the right to direct the application during the continuance of an Event of Default of any and all payments in respect of any Obligation and any proceeds of Collateral. Each Borrower hereby authorizes Agent and each Lender to make a Revolving Loan (which shall be a Base Rate Loan and which may be a Swing Loan) to pay (i) interest, principal (including Swing Loans), L/C Reimbursement Obligations, fees payable under the Fee Letters, Unused Commitment Fees and Letter of Credit Fees, in each instance, on the date due, or (ii) after five (5) days' prior notice to the Borrower Representative, other fees, costs or expenses payable by Amphastar or any of its Subsidiaries hereunder or under the other Loan Documents.

(b) Subject to the provisions set forth in the definition of "Interest Period" herein, if any payment hereunder 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 excluded in the computation, and if applicable, payment, of interest or fees, as the case may be, on such next succeeding Business Day; provided that such extension of time shall be included in the next succeeding computation and payment of interest and fees; provided further that if the scheduled payment date is the maturity date of any Loan such extension of time shall include such interest and fees, which shall be payable on such next succeeding Business Day.

(c) Notwithstanding any contrary provision set forth herein or in any other Loan Document, (i) during the continuance of an Event of Default, Agent may, and shall upon the direction of Required Lenders apply any and all payments received by Agent in respect of any Obligation in accordance with clauses first through sixth below; and (ii) all payments made by Credit Parties to Agent after any or all of the Obligations under the Loan Documents have been accelerated (so long as such acceleration has not been rescinded) or have otherwise matured, including proceeds of Collateral, shall be applied as follows:

first, to payment of costs, expenses and indemnities, including Attorney Costs, of Agent payable or reimbursable by the Credit Parties under the Loan Documents;

second, to payment of Attorney Costs of Lenders payable or reimbursable by the Credit Parties under this Agreement;

third, to payment of all accrued unpaid interest on the Obligations and fees owed to Agent, Lenders and L/C Issuers (whether or not accruing after the filing of any case under the Bankruptcy Code with respect to any Obligations and whether or not a claim for such post-filing or post-petition interest, fees, and charges is allowed or allowable in any such proceeding);

fourth, to payment of principal of the Obligations (including L/C Reimbursement Obligations) then due and payable, the Secured Rate Contract Obligations then due and payable, the Secured Cash Management Obligations then due and payable, and cash collateralization of unmatured L/C Reimbursement Obligations to the extent not then due and payable;

fifth, to payment of any other amounts owing constituting Obligations; and

sixth, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing, (i) amounts received shall be applied to each category in the numerical order provided until exhausted prior to the application to the immediately succeeding category, (ii) each of the Lenders or other Persons entitled to payment shall receive an amount equal to its pro rata share of amounts available to be applied pursuant to clauses third, fourth and fifth above and (iii) no payments by a Guarantor and no proceeds of Collateral of a Guarantor shall be applied to Obligations, the guaranty of which by such Guarantor would constitute an Excluded Rate Contract Obligation. Notwithstanding the foregoing, Secured Rate Contract Obligations and Secured Cash Management Obligations with parties that are not Affiliates of Agent shall be excluded from the application described above unless at least three Business Days prior to any distribution, Agent has received written notice from the applicable Secured Swap Provider or Secured Cash Management Bank of the amount of Secured Rate Contract Obligations or Secured Cash Management Obligations then due and payable, together with such supporting documentation as Agent may request.

2.11 Payments by the Lenders to Agent: Settlement

(a) Agent may, on behalf of Lenders, disburse funds to the Borrowers for Loans requested. Each Lender shall reimburse Agent on demand for all funds disbursed on its behalf by Agent, or if Agent so requests, each Lender will remit to Agent its Commitment Percentage of any Loan before Agent disburses same to the Borrowers. If Agent elects to require that each Lender make funds available to Agent prior to disbursement by Agent to the Borrowers, Agent shall advise each Lender by telephone or fax of the amount of such Lender's Commitment Percentage of the Loan requested by the Borrower Representative no later than the Business Day prior to the scheduled Borrowing date applicable thereto, and each such Lender shall pay Agent such Lender's Commitment Percentage of such requested Loan, in same day funds, by wire transfer to Agent's account, as designated in writing by the Agent to Borrower from time to time, no later than 1:00 p.m. on such scheduled Borrowing date. Nothing in this Section 2.11(a) or elsewhere in this Agreement or the other Loan Documents, including the remaining provisions of

Section 2.11, shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Agent any Lender or the Borrowers may have against any Lender as a result of any default by such Lender hereunder.

(b) At least once each calendar week or more frequently at Agent's election (each, a "**Settlement Date**"), Agent shall advise each Lender by telephone or fax of the amount of such Lender's Commitment Percentage of principal, interest and Fees paid for the benefit of Lenders with respect to each applicable Loan. Agent shall pay to each Lender such Lender's Commitment Percentage (except as otherwise provided in Section 2.1(c)(vi) and Section 2.11(e)(iv)) of principal, interest and fees paid by the Borrowers since the previous Settlement Date for the benefit of such Lender on the Loans held by it; provided, however, that in the case of any payment of principal received by Agent from Borrowers in respect of any Term Loan prior to 1:00 p.m. on any Business Day, Agent shall pay to each applicable Lender such Lender's Commitment Percentage of such payment on such Business Day, and, in the case of any payment of principal received by Agent from Borrowers in respect of any Term Loan later than 1:00 p.m. on any Business Day, Agent shall pay to each applicable Lender such Lender's Commitment Percentage of such payment on the next Business Day. Except as provided in the preceding proviso with respect to Term Loan payments, such payments shall be made by wire transfer to such Lender not later than 2:00 p.m. on the next Business Day following each Settlement Date.

(c) Availability of Lender's Commitment Percentage. Agent may assume that each Revolving Lender will make its Commitment Percentage of each Revolving Loan available to Agent on each Borrowing date. If such Commitment Percentage is not, in fact, paid to Agent by such Revolving Lender when due, Agent will be entitled to recover such amount on demand from such Revolving Lender without setoff, counterclaim or deduction of any kind. If any Revolving Lender fails to pay the amount of its Commitment Percentage forthwith upon Agent's demand, Agent shall promptly notify the Borrower Representative and the Borrowers shall immediately repay such amount to Agent. Nothing in this Section 2.11(c) or elsewhere in this Agreement or the other Loan Documents shall be deemed to require Agent to advance funds on behalf of any Revolving Lender or to relieve any Revolving Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that the Borrowers may have against any Revolving Lender as a result of any default by such Revolving Lender hereunder. Without limiting the provisions of Section 2.11(b), to the extent that Agent advances funds to the Borrowers on behalf of any Revolving Lender and is not reimbursed therefor on the same Business Day as such advance is made, Agent shall be entitled to retain for its account all interest accrued on such advance from the date such advance was made until reimbursed by the applicable Revolving Lender.

(d) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from the Borrowers and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim, defense, or deduction of any kind.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement or any other Loan Document must be returned to any Credit Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be

required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind, and Agent will be entitled to set-off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(iii) (A) If the Agent notifies a Lender, L/C Issuer, or other Secured Party, or any Person who has received funds on behalf of a Lender, L/C Issuer, or other Secured Party (any such Lender, L/C Issuer Bank, other Secured Party or other recipient, a “**Payment Recipient**”), that the Agent has determined in its sole discretion that any funds received by such Payment Recipient from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, L/C Issuer, other Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent and held in trust for the benefit of the Agent, and such Lender, L/C Issuer, or other Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Agent to any Payment Recipient under this Section 2.11(d)(iii) shall be conclusive, absent manifest error.

(B) Without limiting immediately preceding Section 2.11(d)(iii)(A), each Payment Recipient hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (a “**Payment Notice**”), (y) that was not preceded or accompanied by a Payment Notice, or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case, then (1) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Agent to the contrary) or (2) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment.

(C) Each Lender, Issuing Bank and Secured Party hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Bank or Secured Party under any Loan Document, or otherwise payable or distributable by the Agent to such Lender, Issuing Bank or Secured

Party from any source, against any amount due to the Agent under Section 2.11(d)(iii)(A) above or under the indemnification provisions of this Agreement.

(D) The Borrowers and each other Credit Party hereby agree that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be contractually subrogated (irrespective of whether the Agent may be equitably subrogated) to all the rights of such Lender, L/C Issuer, or other Secured Party under the Loan Documents with respect to such amount, (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Borrower or any other Credit Party for the purpose of making such Erroneous Payment, and (z) to the extent that an Erroneous Payment was in any way or at any time credited as a payment or satisfaction of any of the Obligations, the Obligations or part thereof that were so credited, and all rights of the applicable Lender, L/C Issuer, other Secured Party or Agent, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received; provided, however, the amount of such Erroneous Payment that is comprised of funds received by the Agent from the Borrower or any other Credit Party for the purpose of making such Erroneous Payment shall be credited as a payment or satisfaction of the Obligations and the Obligations or part thereof that were so credited shall not be reinstated.

(E) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(F) Each party’s obligations, agreements and waivers under this Section 2.11(d)(iii) shall survive the resignation or replacement of the Agent or any transfer of rights or obligations by, or the replacement of, a Lender, L/C Issuer, or other Secured Party, the termination of any Commitment or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(e) Defaulting Lenders.

(i) Responsibility. The failure of any Defaulting Lender to make any Revolving Loan, or to fund any purchase of any participation to be made or funded by it (including with respect to any Letter of Credit or Swing Loan), or to make any payment required by it under any Loan Document on the date specified therefor shall not relieve any other Lender of its obligations to make such loan, fund the purchase of any such participation, or make any other such required payment on such date, and neither Agent nor, other than as expressly set forth herein, any other Lender shall be responsible for the failure of any Defaulting Lender to make a loan, fund the purchase of a participation or make any other required payment under any Loan Document.

(ii) Reallocation. If any Revolving Lender is a Defaulting Lender, all or a portion of such Defaulting Lender's Letter of Credit Obligations (unless such Lender is the L/C Issuer that Issued such Letter of Credit) and reimbursement obligations with respect to Swing Loans shall, at Agent's election at any time or upon any L/C Issuer's or Swing Lender's, as applicable, written request delivered to Agent (whether before or after the occurrence of any Default or Event of Default), be reallocated to and assumed by the Revolving Lenders that are not Defaulting Lenders pro rata in accordance with their Commitment Percentages of the Aggregate Revolving Loan Commitment (calculated as if the Defaulting Lender's Commitment Percentage was reduced to zero and each other Revolving Lender's (other than any other Defaulting Lender's) Commitment Percentage had been increased proportionately), provided that no Revolving Lender shall be reallocated any such amounts or be required to fund any amounts that would cause the sum of its outstanding Revolving Loans, outstanding Letter of Credit Obligations, amounts of its participations in Swing Loans and its pro rata share of unparticipated amounts in Swing Loans to exceed its Revolving Loan Commitment. Subject to Section 10.25, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(iii) Voting Rights. Notwithstanding anything set forth herein to the contrary, including Section 10.1, a Defaulting Lender (other than a Defaulting Lender who holds no unfunded Commitment) shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" or a "Revolving Lender" (or be, or have its Loans and Commitments, included in the determination of "Required Lenders", "Required Revolving Lenders" or "Lenders directly affected" pursuant to Section 10.1) for any voting or consent rights under or with respect to any Loan Document, provided that (A) the Commitment of a Defaulting Lender may not be increased, extended or reinstated, (B) the principal of a Defaulting Lender's Loans may not be reduced or forgiven, and (C) the interest rate applicable to Obligations under the Loan Documents owing to a Defaulting Lender may not be reduced in such a manner that by its terms affects such Defaulting Lender more adversely than other Lenders, in each case, without the consent of such Defaulting Lender. Moreover, for the purposes of determining Required Lenders and Required Revolving Lenders, the Loans, Letter of Credit Obligations, and Commitments held by Defaulting Lenders shall be excluded from the total Loans and Commitments outstanding.

(iv) Borrower Payments to a Defaulting Lender. Agent shall be authorized to use all payments received by Agent for the benefit of any Defaulting Lender pursuant to this Agreement to pay in full the Aggregate Excess Funding Amount to the appropriate Secured Parties. Agent shall be entitled to hold as cash collateral in a non-interest bearing account up to an amount equal to such Defaulting Lender's pro rata share, without giving effect to any reallocation pursuant to Section 2.11(e)(ii), of all Letter of Credit Obligations until the Facility Termination Date. Upon any such unfunded obligations owing by a Defaulting Lender becoming due and payable, Agent shall be authorized to use such cash collateral to make such payment on behalf of such Defaulting Lender. With respect to such Defaulting Lender's failure to fund Revolving Loans or purchase participations in Letters of Credit or Letter of Credit Obligations, any amounts applied by Agent to satisfy such funding shortfalls shall be deemed to constitute a Revolving Loan or amount of the participation required to be funded and, if necessary to effectuate the foregoing with respect to Revolving Loans, the other Revolving Lenders shall be deemed to have sold, and such

Defaulting Lender shall be deemed to have purchased, Revolving Loans or Letter of Credit participation interests from the other Revolving Lenders until such time as the aggregate amount of the Revolving Loans and participations in Letters of Credit and Letter of Credit Obligations are held by the Revolving Lenders in accordance with their Commitment Percentages of the Aggregate Revolving Loan Commitment. Any amounts owing by a Defaulting Lender to Agent which are not paid when due shall accrue interest at the interest rate applicable during such period to Revolving Loans that are Base Rate Loans.

In the event that Agent is holding cash collateral of a Defaulting Lender that cures pursuant to clause (v) below or ceases to be a Defaulting Lender pursuant to the definition of Defaulting Lender, Agent shall return the unused portion of such cash collateral to such Lender. The "**Aggregate Excess Funding Amount**" of a Defaulting Lender shall be the aggregate amount of (A) all unpaid obligations owing by such Lender to Agent, L/C Issuers, Swing Lender, and other Lenders under the Loan Documents, including such Lender's pro rata share of all Revolving Loans, Letter of Credit Obligations and Swing Loans, plus, without duplication, (B) all amounts of such Defaulting Lender's Letter of Credit Obligations and reimbursement obligations with respect to Swing Loans reallocated to other Lenders pursuant to Section 2.11(e)(ii).

(v) Cure. A Lender may cure its status as a Defaulting Lender under clause (a) of the definition of Defaulting Lender if such Lender fully pays to Agent, on behalf of the applicable Secured Parties, the Aggregate Excess Funding Amount, plus all interest due thereon. Any such cure shall not relieve any Lender from liability for breaching its contractual obligations hereunder and shall not constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(vi) Fees. A Lender that is a Defaulting Lender pursuant to clause (a) of the definition of Defaulting Lender shall not earn and shall not be entitled to receive, and the Borrowers shall not be required to pay, such Lender's portion of the Unused Commitment Fee during the time such Lender is a Defaulting Lender pursuant to clause (a) thereof. In the event that any reallocation of Letter of Credit Obligations occurs pursuant to Section 2.11(e)(ii), during the period of time that such reallocation remains in effect, the Letter of Credit Fee payable with respect to such reallocated portion shall be payable to (A) all Revolving Lenders based on their pro rata share of such reallocation or (B) to the L/C Issuer for any remaining portion not reallocated to any other Revolving Lenders. So long as a Lender is a Defaulting Lender, the Letter of Credit Fee payable with respect to any Letter of Credit Obligation of such Defaulting Lender that has not been reallocated pursuant to Section 2.11(e)(ii) shall be payable to the L/C Issuer.

(f) Procedures. Agent is hereby authorized by each Credit Party and each other Secured Party to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents and similar items on, by posting to or submitting and/or completion, on E-Systems.

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

2.12 Borrower Representative. Amphastar hereby (i) is designated and appointed by each Borrower as its representative and agent on its behalf (the “**Borrower Representative**”) and (ii) accepts such appointment as the Borrower Representative, in each case, for the purposes of issuing Notices of Borrowings, Notices of Conversion/Continuation, L/C Requests and Swingline Requests, delivering certificates including Compliance Certificates, giving instructions with respect to the disbursement of the proceeds of the Loans, selecting interest rate options, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants, but without relieving any other Borrower of its joint and several obligations to pay and perform the Obligations) on behalf of any Borrower or the Borrowers under the Loan Documents. Agent and each Lender may regard any notice or other communication pursuant to any Loan Document from the Borrower Representative as a notice or communication from all Borrowers. Each warranty, covenant, agreement and undertaking made on behalf of a Borrower by the Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

ARTICLE III

CONDITIONS PRECEDENT

3.1 Conditions of Initial Loans. The obligation of each Lender to make its initial Loans and of each L/C Issuer to Issue, or cause to be Issued, the initial Letters of Credit hereunder is subject to satisfaction of the following conditions in a manner reasonably satisfactory to Agent, except to the extent expressly permitted to be delivered after the Closing Date by a date required in Section 5.16:

(a) Loan Documents. Agent shall have received on or before the Closing Date this Agreement duly executed by Agent, all Lenders named on the signature pages hereto, Borrower Representative and each of its Subsidiaries (other than Excluded Subsidiaries) as Guarantors, together with all other agreements, documents, instruments and other items set forth on the closing checklist attached hereto as Exhibit 3.1, including (i) all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations and (ii) the Flood Insurance Requirements in the case of any Mortgages to be delivered on the Closing Date, each in form and substance reasonably satisfactory to Agent.

(b) Fees and Expenses. The Agent and Lenders shall have received payment for all fees and expenses required to be paid on the Closing Date pursuant to any Loan Document or other applicable Contractual Obligation; and

(c) KYC Information. At least five days prior to the Closing Date, any Borrower that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Borrower.

For the purpose of determining satisfaction with the conditions specified in this Section 3.1, each Lender that has signed and delivered this Agreement shall be deemed to have accepted, and to be satisfied with, each document or other matter required under this Section 3.1 unless Agent shall have received written notice from such Lender prior to the Closing Date specifying its objection thereto.

3.2 Conditions to All Borrowings. Except as otherwise expressly provided herein, no Lender or L/C Issuer shall be obligated to fund any Loan or incur any Letter of Credit Obligation, if, as of the date thereof:

(a) any representation or warranty by any Credit Party contained herein or in any other Loan Document is untrue or incorrect in any material respect (without duplication of any materiality qualifier contained therein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties were untrue or incorrect in any material respect (without duplication of any materiality qualifier contained therein) as of such earlier date), and (i) with respect to Revolving Loans or Issuances of Letters of Credit, Agent or Required Revolving Lenders have determined not to make such Loan or incur such Letter of Credit Obligation as a result of the fact that such representation or warranty is untrue or incorrect or (ii) with respect to Incremental Term Loans, the Persons providing such Incremental Term Loan have determined not to make such Incremental Term Loan as a result of the fact that such representation or warranty is untrue or incorrect; or

(b) (i) with respect to Revolving Loans or Issuances of Letters of Credit, any Default or Event of Default has occurred and is continuing or would reasonably be expected to result after giving effect to any Loan (or the incurrence of any Letter of Credit Obligation), and Agent or Required Revolving Lenders shall have determined not to make such Revolving Loan or incur such Letter of Credit Obligation as a result of that Default or Event of Default or (ii) with respect to Incremental Term Loans, the conditions set forth in Section 2.1(e)(ii)(A) shall not be or have been satisfied; or

(c) after giving effect to any Revolving Loan (or the incurrence of any Letter of Credit Obligations), the aggregate outstanding principal amount of the Revolving Loans would exceed the Maximum Revolving Loan Balance.

The request by the Borrower Representative and acceptance by the Borrowers of the proceeds of any Loan or the incurrence of any Letter of Credit Obligations shall be deemed to constitute, as of the date thereof, (i) a representation and warranty by the Borrowers that (x) except with respect to Incremental Term Loans if and as applicable as provided in Section 3.2(a)(ii) above, each representation and warranty by any Credit Party contained herein or in any other Loan Document is true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties were true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date) and (y) the conditions in this Section 3.2 (without regard to any determination or agreement made or to be made by Agent, Required Revolving Lenders or providers of any Incremental Term Loan under Section 3.2(a)(i) or Section 3.2(a)(ii)) have been satisfied and (ii) a reaffirmation by each Credit Party of the granting and continuance of Agent's Liens, on behalf of itself and the Secured Parties, pursuant to the Collateral Documents.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

The Credit Parties, jointly and severally, represent and warrant to Agent and each Lender that the following are true, correct and complete:

4.1 Corporate Existence and Power. Each Credit Party and each of their respective Subsidiaries: (a) is a corporation, limited liability company or limited partnership, as applicable, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, as applicable; (b) has the power and authority and all governmental licenses, authorizations, Permits, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver, and perform its obligations under the Loan Documents to which it is a party; (c) is duly qualified as a foreign corporation, limited liability company or limited partnership, as applicable, and licensed and in good standing, under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification or license; and (d) is in compliance with all Requirements of Law; except, in each case referred to in clause (b)(i), (c) or clause (d), to the extent that the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

4.2 Corporate Authorization; No Contravention. The execution, delivery and performance by the Credit Parties of this Agreement and by each Credit Party of any other Loan Document to which such Person is party, have been duly authorized by all necessary action, and do not and will not (a) contravene the terms of any of that Person's Organization Documents; (b) conflict with or result in any material breach or contravention of, or result in the creation of any Lien (other than Liens in favor of Agent created under the Loan Documents) under, any document evidencing any material Contractual Obligation to which such

Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its Property is subject, (c) materially adversely affect any Regulatory Permit; or (d) violate any material Requirement of Law in any material respect.

4.3 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Credit Party of this Agreement or any other Loan Document except (a) for recordings and filings in connection with the Liens granted to Agent under the Collateral Documents and (b) those obtained or made on or prior to the Closing Date.

4.4 Binding Effect. This Agreement and each other Loan Document to which any Credit Party is a party constitute the legal, valid and binding obligations of each such Person which is a party thereto, enforceable against such Person in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

4.5 Litigation. Except as specifically disclosed in Schedule 4.5, there are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of each Credit Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against any Credit Party, any Subsidiary of any Credit Party or any of their respective Properties which:

- (a) purport to affect or pertain to this Agreement, any other Loan Document or any of the transactions contemplated hereby or thereby; or
- (b) would reasonably be expected to result in monetary judgment(s) or relief, individually or in the aggregate, in excess of \$7,500,000; or
- (c) seek an injunction or other equitable relief which would reasonably be expected to have a Material Adverse Effect.

No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided. As of the Closing Date, no Credit Party or any Subsidiary of any Credit Party is the subject of an audit or, to each Credit Party's knowledge, any review or investigation by any Governmental Authority (excluding the IRS and other taxing authorities) concerning the violation or possible violation of any Requirement of Law.

4.6 No Default. No Default or Event of Default exists or would result from the incurring of any Obligations by any Credit Party or the grant or perfection of Agent's Liens on the Collateral. No Credit Party and no Subsidiary of any Credit Party is in default under or with respect to any Contractual Obligation in any respect which, individually or together with all such defaults, would reasonably be expected to have a Material Adverse Effect.

4.7 ERISA Compliance.

(a) Schedule 4.7 sets forth, as of the Closing Date, a complete and correct list of, and that separately identifies, (a) all Title IV Plans and (b) all Multiemployer Plans. (i) Each Employee Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code has received a favorable determination letter or, if based on a preapproved plan, is entitled to rely on a favorable advisory or opinion letter, from the IRS, (ii) each Employee Benefit Plan is in compliance with

applicable provisions of ERISA, the Code and other Requirements of Law, except where a failure to be in compliance could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, (iii) there are no existing or pending (or to the knowledge of any Credit Party or any Subsidiary of a Credit Party, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Employee Benefit Plan to which any Credit Party or any Subsidiary of a Credit Party incurs or otherwise has or could have an obligation or any Liability, that could, in the aggregate, reasonably be expected to have a Material Adverse Effect, (iv) no ERISA Event has occurred or is reasonably expected to occur (v) as of the most recent valuation date for any Title IV Plan, any amount of Unfunded Benefit Liabilities, individually or in the aggregate (except for purposes of computation of any Title IV Plan with respect to which assets exceed benefit liabilities), could not reasonably be expected to have a Material Adverse Effect, and (vi) as of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of the Borrowers, their Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 101(1) of ERISA, could not reasonably be expected to have a Material Adverse Effect. On the Closing Date, no ERISA Event has occurred in connection with which material obligations or material Liabilities of a Credit Party or a Subsidiary of a Credit Party remain outstanding.

(b) Each Non-U.S. Plan in all material respects has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders, including those necessary to obtain any intended tax qualification, and including with respect to any required contributions, and has been maintained, where required, in good standing with applicable regulatory authorities, except as would not reasonably be expected to result in a material liability. No Credit Party or any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Non-U.S. Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan, determined as of the end of the Credit Party's most recently ended fiscal year on the basis of reasonable actuarial assumptions, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities by more than \$5,000,000.

4.8 Use of Proceeds; Margin Regulations. The proceeds of the Loans are intended to be and shall be used solely for the purposes set forth in and permitted by Section 5.10. No Credit Party and no Subsidiary of any Credit Party is engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. As of the Closing Date, except as set forth on Schedule 4.8, no Credit Party and no Subsidiary of any Credit Party owns any Margin Stock.

4.9 Ownership of Property; Liens. As of the Closing Date, the Real Estate listed in Schedule 4.9 constitutes all of the Real Estate of each Credit Party and each of their respective Subsidiaries. Each of the Credit Parties and each of their respective Subsidiaries has good record title or valid leasehold interests in all Real Estate and personal property and valid leasehold interests in all leased personal property, in each instance, necessary or used in the ordinary conduct of their respective businesses. None of the Property of any Credit Party or any Subsidiary of any Credit Party is subject to any Liens other than Permitted Liens.

4.10 Taxes. All federal, state, local and foreign income and franchise and other material Tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by any Tax Affiliate have been filed with the appropriate Governmental Authorities, all such Tax Returns are true and correct in all material respects, and all Taxes reflected therein or otherwise due and payable have been paid prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP. As of the Closing Date, no Tax Return is under audit or examination by any Governmental Authority and no written notice of any audit or

examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in full and complete compliance with the Tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities. No Tax Affiliate has participated in a “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4(b) or has been a member of an affiliated, combined or unitary group other than the group of which a Tax Affiliate is the common parent.

4.11 Financial Condition.

(a) Each of (i) the audited consolidated balance sheet of Amphastar and its Subsidiaries dated December 31, 2020, and the related audited consolidated statements of income or operations, shareholders’ equity and cash flows for the Fiscal Year ended on that date and (ii) the unaudited interim consolidated balance sheet of Amphastar and its Subsidiaries dated March 31, 2021 and the related unaudited consolidated statements of income, shareholders’ equity and cash flows for the two Fiscal Quarters then ended:

(x) were prepared in accordance with GAAP consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, subject to, in the case of the unaudited interim financial statements, normal year-end adjustments and the lack of footnote disclosures; and

(y) present fairly in all material respects the consolidated financial condition of Amphastar and its Subsidiaries as of the dates thereof and results of operations for the periods covered thereby.

(b) Since December 31, 2020 there has been no Material Adverse Effect or any event or circumstance which would reasonably be expected to result in a Material Adverse Effect.

(c) All financial performance projections delivered to Agent, including the financial performance projections delivered on or prior to the Closing Date, represent the Borrowers’ good faith estimate of future financial performance and are based on assumptions believed by the Borrowers to be fair and reasonable in light of current market conditions, it being acknowledged and agreed by Agent and Lenders that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material.

4.12 Environmental Matters. Except as set forth in Schedule 4.12 and except where any failures to comply would not reasonably be expected to result in, either individually or in the aggregate, Material Environmental Liabilities to the Credit Parties and their Subsidiaries, each Credit Party and each Subsidiary of each Credit Party (a) are currently, and for the five year period immediately prior to the Closing Date have been, in compliance with all applicable Environmental Laws, including obtaining and maintaining all Permits required by any applicable Environmental Law, (b) is not party to, and no Real Estate currently (or to the knowledge of any Credit Party previously) owned, leased, subleased, operated or otherwise occupied by or for any such Person is subject to or the subject of, any Contractual Obligation or any pending or, to the knowledge of any Credit Party, threatened, order, action, investigation, suit, proceeding, audit, Lien, claim, demand, dispute or notice of violation or of potential liability or similar notice relating in any manner to any Environmental Law, (c) has not caused or suffered to occur a Release of Hazardous Materials at, to or from any Real Estate, (d) does not currently (or to the knowledge of any Credit Party, previously) own, lease, sublease, operate or otherwise occupy Real Estate that is

contaminated by any Hazardous Materials and (e) is not, and has not been, engaged in, and has not permitted any current or former tenant to engage in, operations in violation of any Environmental Law and knows of no facts, circumstances or conditions reasonably constituting notice of a violation of any Environmental Law, including receipt of any information request or notice of potential responsibility under the Comprehensive Environmental Response, Compensation and Liability Act or similar Environmental Laws.

4.13 Regulated Entities: Affected Financial Institution.

(a) None of any Credit Party, any Person controlling any Credit Party, or any Subsidiary of any Credit Party, is (a) an “investment company” within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute, rule or regulation limiting its ability to incur Indebtedness, pledge its assets or perform its obligations under the Loan Documents.

(b) No Credit Party nor any Subsidiary thereof is an Affected Financial Institution.

4.14 Solvency. Both before and after giving effect to (a) the Loans made and Letters of Credit Issued on or prior to the date this representation and warranty is made or remade, (b) the disbursement of the proceeds of such Loans to or as directed by the Borrower Representative and (c) the payment and accrual of all transaction costs in connection with the foregoing, the Credit Parties taken as a whole are Solvent.

4.15 Labor Relations. There are no strikes, work stoppages, slowdowns or lockouts existing, pending (or, to the knowledge of any Credit Party, threatened) against or involving any Credit Party or any Subsidiary of any Credit Party, except for those that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 4.15, as of the Closing Date, (a) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Credit Party or any Subsidiary of any Credit Party, (b) no petition for certification or election of any such representative is existing or pending with respect to any employee of any Credit Party or any Subsidiary of any Credit Party and (c) to the knowledge of the Credit Parties, no such representative has sought certification or recognition with respect to any employee of any Credit Party or any Subsidiary of any Credit Party.

4.16 Intellectual Property. Each Credit Party and each Subsidiary of each Credit Party owns, or is licensed or otherwise has the right to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license or otherwise have the right to use, would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Credit Party, (a) the conduct and operations of the businesses of each Credit Party and each Subsidiary of each Credit Party does not infringe, misappropriate, dilute or violate any Intellectual Property owned by any other Person and (b) no other Person has contested any right, title or interest of any Credit Party or any Subsidiary of any Credit Party in, or relating to, any Intellectual Property, other than, in each case, as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.17 Brokers' Fees; Transaction Fees. Except as disclosed on Schedule 4.17 and except for fees payable to Agent and Lenders, none of the Credit Parties or any of their respective Subsidiaries has any obligation to any Person in respect of any finder's, broker's or investment banker's fee in connection with the transactions contemplated hereby.

4.18 Ventures, Subsidiaries and Affiliates; Outstanding Stock. Except as set forth in Schedule 4.18, as of the Closing Date, no Credit Party and no Subsidiary of any Credit Party (a) has any Subsidiaries, or (b) is engaged in any joint venture or partnership with any other Person. All issued and outstanding Stock of each of the Credit Parties and each of their respective Subsidiaries are duly authorized and validly issued, fully paid and non-assessable, and other than with respect to the Stock of Amphastar, are free and clear of all Liens other than those in favor of Agent for the benefit of the Secured Parties and other than non-consensual Permitted Liens arising by operation of law. All such securities were issued in compliance with all applicable state and federal laws concerning the issuance of securities. All of the issued and outstanding Stock of each Credit Party (other than Amphastar) and each Subsidiary of each Credit Party is owned by each of the Persons and in the amounts set forth in Schedule 4.18. Except as set forth in Schedule 4.18, there are no pre-emptive or other outstanding rights to purchase, options, warrants or similar rights or agreements pursuant to which any Credit Party (other than Amphastar) may be required to issue, sell, repurchase or redeem any of its Stock or any Stock of its Subsidiaries. Set forth in Schedule 4.18 is a true and complete organizational chart of Amphastar and all of its Subsidiaries, which the Credit Parties shall update upon notice to Agent promptly following the completion of any Permitted Acquisition or other Investment and promptly following the incorporation, organization or formation of any Subsidiary.

4.19 Jurisdiction of Organization; Chief Executive Office. Schedule 4.19 lists each Credit Party's jurisdiction of organization, legal name and organizational identification number, if any, and the location of such Credit Party's chief executive office or sole place of business, in each case as of the date hereof, and such Schedule 4.19 also lists all jurisdictions of organization and legal names of such Credit Party for the five years preceding the Closing Date.

4.20 Deposit Accounts and Other Accounts. Schedule 4.20 lists all banks and other financial institutions securities intermediary or commodity intermediary at which any Credit Party maintains deposit, securities, commodities or similar accounts as of the Closing Date, and such Schedule correctly identifies the name, address and any other relevant contact information reasonably requested by Agent with respect to each depository or intermediary, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

4.21 Full Disclosure; Beneficial Ownership. (a) None of the statements contained in each exhibit, report, statement or certificate furnished by or on behalf of any Credit Party or any of their Subsidiaries in connection with the Loan Documents and the Transactions (including the offering and disclosure materials, if any, delivered by or on behalf of any Credit Party to Agent or the Lenders prior to the Closing Date, but excluding any projections, budgets, financial estimates and other forward looking information and information of a general economic or a general industry nature), when taken as a whole, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not materially misleading as of the time when made or delivered. All projections, budgets, estimates and other forward looking information contained in the materials referenced above represent good faith estimates and are based on assumptions believed by the Credit Parties to be fair and reasonable as of the time when made or delivered (it being recognized that such projections, budgets, estimates and other forward looking information are not to be viewed as facts and that the actual results during the period or periods covered by such projections, budgets, estimates and other forward looking information may differ from the projected results and such differences may be material).

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all material respects.

4.22 Foreign Assets Control Regulations; Anti-Money Laundering; Anti-Corruption Practices.

(a) Each Credit Party and each Subsidiary of each Credit Party is in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations (“**Sanctions**”) as administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) and the U.S. State Department. No Credit Party and no Subsidiary of a Credit Party (i) is a Person on the list of the Specially Designated Nationals and Blocked Persons (the “**SDN List**”), (ii) is a person who is otherwise the target of U.S. economic sanctions laws such that a U.S. person cannot deal or otherwise engage in business transactions with such person, (iii) is a Person organized or resident in a country or territory subject to comprehensive Sanctions (a “**Sanctioned Country**”), or (iv) is owned or controlled by (including by virtue of such Person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any Person on the SDN List or a government of a Sanctioned Country such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited by U.S. law.

(b) Each Credit Party and each Subsidiary of each Credit Party is in compliance with all laws related to terrorism or money laundering (“**Anti-Money Laundering Laws**”) including: (i) all applicable requirements of the Currency and Foreign Transactions Reporting Act of 1970 (31 U.S.C. 5311 et. seq., (the Bank Secrecy Act)), as amended by Title III of the USA Patriot Act, (ii) the Trading with the Enemy Act, (iii) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (66 Fed. Reg. 49079), any other enabling legislation, executive order or regulations issued pursuant or relating thereto and (iv) other applicable federal or state laws relating to “know your customer” or anti-money laundering rules and regulations. No action, suit or proceeding by or before any court or Governmental Authority with respect to compliance with such Anti-Money Laundering Laws is pending or threatened to the knowledge of each Credit Party and each Subsidiary of each Credit Party.

(c) Each Credit Party and each Subsidiary of each Credit Party is in compliance in all material respects with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977 (“**FCPA**”) and the U.K. Bribery Act 2010 (“**Anti-Corruption Laws**”). None of the Credit Party or any Subsidiary, nor to the knowledge of the Credit Party, any director, officer, agent, employee, or other person acting on behalf of the Credit Party or any Subsidiary, has taken any action, directly or indirectly, that would result in a violation of applicable Anti-Corruption Laws.

(d) The Credit Party and each Subsidiary has instituted and will continue to both implement and maintain policies and procedures designed to ensure compliance by the Credit Parties, their Subsidiaries and their respective directors, officers, employees and agents with applicable Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws.

4.23 Regulatory Matters.

(a) Schedule 4.23 sets forth, as of the Closing Date, a complete and correct list of all active Regulatory Permits held by each Credit Party and its Subsidiaries. Such listed Regulatory Permits are the only Regulatory Permits that are required for the Credit Parties and their Subsidiaries to conduct their respective businesses as presently conducted. Each Credit Party and its Subsidiaries has, and it and its Products are in conformance with, all Regulatory Permits and Pharma Laws required to conduct its respective businesses as now or currently proposed to be conducted except where the failure to have such Regulatory Permits would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. The Credit Parties and their Subsidiaries expect from time-to-time to obtain or acquire new Regulatory Permits. Nothing herein in any way limits the Credit Party and its Subsidiaries either from obtaining

or acquiring new Regulatory Permits or abandoning existing Regulatory Permits. To the knowledge of each Credit Party and its Subsidiaries, (i) no Governmental Authority is considering limiting, suspending, or revoking such Regulatory Permits or changing the marketing classification or labeling or other significant parameter affecting the Products of the Credit Parties or any of their respective Subsidiaries, (ii) no event has occurred or condition or state of facts exists which would present potential product liability related, in whole or in part, to Regulatory Matters and (iii) each third party that is a manufacturer or contractor for the Credit Parties or any of their respective Subsidiaries is in compliance with all Regulatory Permits required by the FDA or comparable Governmental Authority and all Pharma Laws insofar as they reasonably pertain to the Products of the Credit Parties and their respective Subsidiaries. There is no materially false or misleading information or significant omission in any product application or other submission to any Governmental Authority administering Pharma Laws. The Credit Parties and their respective Subsidiaries have fulfilled and performed their obligations under each Regulatory Permit, and no event has occurred or condition or state of facts exists which would constitute a breach or default, or would cause revocation or termination of any such Regulatory Permit.

(b) All Products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold or marketed by or on behalf of the Credit Parties or their respective Subsidiaries that are subject to Pharma Laws have been and are being designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold and marketed in compliance with the Pharma Laws, Regulatory Permits and any other applicable Requirement of Law.

(c) Except as set forth on Schedule 4.23, no Credit Party nor its Subsidiaries is subject to any obligation arising under an administrative or regulatory action, proceeding, investigation or inspection by or on behalf of a Governmental Authority, warning letter, notice of violation letter, consent decree, request for information or other notice, response or commitment made to or with a Governmental Authority with respect to Regulatory Matters, and, to the knowledge of each Credit Party and its Subsidiaries, no such obligation has been threatened. Each Credit Party and its Subsidiaries has made all notifications, submissions, and reports required by any such obligation described on Schedule 4.23, and, to the knowledge of each Credit Party, all such notifications, submissions and reports were true and correct in all material respects as of the date of submission to FDA or any other Governmental Authority. There is no, and there is no act, omission, event, or circumstance of which any Credit Party or any of its Subsidiaries has knowledge that would reasonably be expected to give rise to or lead to, any civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, FDA warning letter, or proceeding pending against any Credit Party or its Subsidiaries, and, to each Credit Party's and its Subsidiary's knowledge, no Credit Party nor its Subsidiaries has any liability (whether actual or contingent) for failure to comply with any Pharma Laws. There has not been any violation of any Pharma Laws by any Credit Party or its Subsidiaries in its product development efforts, submissions, record keeping and reports to the FDA or any other Governmental Authority that could reasonably be expected to require or lead to investigation, or enforcement, regulatory or administrative action that would reasonably be expected, in the aggregate, have a Material Adverse Effect. To the knowledge of each Credit Party and each of their respective Subsidiaries, there are no civil or criminal proceedings relating to any Credit Party or any of its Subsidiaries or any officer, director or employee of any Credit Party or Subsidiary of any Credit Party that involve a matter within or related to the FDA's or any other Governmental Authority's jurisdiction.

(d) Except as set forth on Schedule 4.23, as of the Closing Date, no Credit Party nor its Subsidiaries is undergoing any inspection by any Governmental Authority related to Regulatory Matters, or to the knowledge of each Credit Party and its Subsidiaries, any other Governmental Authority investigation.

(e) To the knowledge of each Credit Party and its Subsidiaries, during the period of three calendar years immediately preceding the Closing Date, no Credit Party nor any Subsidiary of any Credit Party has introduced into commercial distribution any Products manufactured by or on behalf of any Credit Party or any Subsidiary of a Credit Party or distributed any products on behalf of another manufacturer that were upon their shipment by any Credit Party or any of its Subsidiaries adulterated or misbranded in violation of 21 U.S.C. § 331. No Credit Party nor any Subsidiary of any Credit Party has received any notice of communication from any Governmental Authority alleging material noncompliance with any Requirement of Law. No Product has been seized, withdrawn, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution, or commercialization activity, and there are no facts or circumstances reasonably likely to cause (i) the seizure, denial, withdrawal, recall, detention, public health notification, safety alert or suspension of manufacturing or other activity relating to any Product; (ii) a change in the labeling of any Product suggesting a compliance issue or risk; or (iii) a termination, seizure or suspension of manufacturing, researching, distributing or marketing of any Product. No proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, revocation, suspension, import detention, or seizure of any Product are pending or threatened against any Credit Party or any of its Subsidiaries.

(f) No Credit Party nor any Subsidiary of any Credit Party nor any of their respective officers, directors, employees, agents, or contractors (i) have been excluded or debarred from any federal healthcare program (including Medicare or Medicaid) or any other federal program or (ii) have received notice from the FDA or any other Governmental Authority with respect to debarment or disqualification of any Person that would reasonably be expected to have, in the aggregate, a Material Adverse Effect. No Credit Party nor any Subsidiary of any Credit Party nor any of their respective officers, directors, employees, agents or contractors have been convicted of any crime or engaged in any conduct for which (x) debarment is mandated or permitted by 21 U.S.C. § 335a or (y) such Person could be excluded from participating in the federal health care programs under Section 1128 of the Social Security Act or any similar law. No officer and to the knowledge of each Credit Party and its Subsidiaries, no employee or agent of any Credit Party or its Subsidiaries, has (A) made any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; (B) failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or (C) committed an act, made a statement, or failed to make a statement that would reasonably be expected to provide the basis for the FDA to invoke its policy respecting “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities,” as set forth in 56 Fed. Reg. 46191 (September 10, 1991), or for any other Governmental Authority to invoke a comparable policy.

(g) Reserved.

(h) Except as set forth on Schedule 4.23: (i) each Credit Party and its Subsidiaries and, to their knowledge, their respective contract manufacturers are, and have been for the past three calendar years, in compliance with, and each Product in current commercial distribution is designed, manufactured, processed, prepared, assembled, packaged, labeled, stored, installed, serviced and held in compliance with, the current Good Manufacturing Practice regulations set forth in 21 C.F.R. Parts 210, 211, and 820 or comparable quality management system, including, but not limited to, ISO 13485, as applicable, as applicable, (ii) each Credit Party and its Subsidiaries is in compliance with the written procedures, record-keeping and reporting requirements required by the FDA or any comparable Governmental Authority pertaining to the reporting of adverse events and recalls involving the Products, (iii) all Products are and have been labeled, promoted,

and advertised in accordance with their Regulatory Permits and approved or cleared labeling or within the scope of an exemption from obtaining such Regulatory Permits, and (iv) each Credit Party and its Subsidiaries' establishments are registered with the FDA, as applicable, and each Product is listed with the FDA under the applicable FDA registration regulations for pharmaceuticals and medical devices.

ARTICLE V

AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that until the Facility Termination Date:

5.1 Financial Statements. Each Credit Party shall maintain, and shall cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit the preparation of financial statements in conformity with GAAP (provided that unaudited interim financial statements shall not be required to have footnote disclosures and are subject to normal year-end adjustments). The Borrower Representative shall deliver to Agent and each Lender by Electronic Transmission and in detail reasonably satisfactory to Agent and the Required Lenders:

(a) as soon as available, but not later than one-hundred and twenty (120) days after the end of each Fiscal Year, a copy of the audited consolidated balance sheets of Amphastar and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, and accompanied by the report of any "Big Four" or other nationally-recognized independent certified public accounting firm reasonably acceptable to Agent which report shall (i) contain an unqualified opinion, stating that such consolidated financial statements present fairly in all material respects the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years and (ii) not include any explanatory paragraph expressing substantial doubt as to going concern status (other than in connection with (y) the maturity of the Loans and termination of the Revolving Loan Commitments hereunder and (z) any prospective breach of any of the financial covenants set forth in Section 7.1 or Section 7.2), in each case, solely in the case of the audit delivered with respect to the Fiscal Year immediately prior to the Fiscal Year during which the applicable maturity and termination is scheduled hereunder, as applicable, to occur; and

(b) as soon as available, but not later than forty-five (45) days after the end of the first three Fiscal Quarters of each year, a copy of the unaudited consolidated balance sheets of Amphastar and its Subsidiaries, and the related consolidated statements of income, shareholders' equity and cash flows as of the end of such Fiscal Quarter and for the portion of the Fiscal Year then ended, all certified on behalf of the Borrowers by an appropriate Responsible Officer of the Borrower Representative as being complete and correct and fairly presenting, in all material respects, in accordance with GAAP, the financial position and the results of operations of Amphastar and its Subsidiaries, subject to normal year-end adjustments and absence of footnote disclosures.

5.2 Certificates; Other Information. The Borrower Representative shall furnish to Agent (and Agent shall thereafter make available to each Lender) by Electronic Transmission:

(a) together with each delivery of annual and quarterly financial statements pursuant to Section 5.1, (i) a management discussion and analysis report, in reasonable detail, signed by the chief financial officer of the Borrower Representative, describing the financial condition and

results of operation of the Credit Parties and their Subsidiaries for the Fiscal Quarter and the portion of the Fiscal Year then ended (or for the Fiscal Year then ended in the case of annual financial statements), and (ii) a report setting forth in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the most recent projections for the current Fiscal Year delivered pursuant to Section 5.2(d) and discussing the reasons for any significant variations.

(b) concurrently with the delivery of the annual financial statements pursuant to Section 5.1(a) and quarterly financial statements for the first three Fiscal Quarters of each Fiscal Year pursuant to Section 5.1(b), a fully and properly completed certificate in the form of Exhibit 5.2(b) (a “**Compliance Certificate**”), certified on behalf of the Borrowers by a Responsible Officer of the Borrower Representative, which Compliance Certificate shall set forth in reasonable detail any Margin Stock owned by each Credit Party and each Subsidiary of each Credit Party, as of the last day of each Fiscal Quarter;

(c) reserved;

(d) as soon as available and in any event no later than sixty (60) days after the last day of each Fiscal Year of the Borrowers, projections of the Credit Parties (and their Subsidiaries) consolidated and consolidating financial performance for the forthcoming three Fiscal Years on a year by year basis, and for the forthcoming Fiscal Year on a quarter by quarter basis;

(e) promptly upon receipt thereof, copies of any reports submitted by the Borrowers’ certified public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or internal control systems of any Credit Party made by such accountants;

(f) from time to time, if Agent reasonably determines that obtaining appraisals is necessary in order for Agent or any Lender to comply with applicable laws or regulations (including any appraisals required to comply with FIRREA), and at any time if an Event of Default shall have occurred and be continuing, Agent may, or may require the Borrowers to, in either case at the Borrowers’ expense, obtain appraisals in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market value of all or any portion of the personal property of any Credit Party or any Subsidiary of any Credit Party and the fair market value or such other value as determined by Agent (for example, replacement cost for purposes of Flood Insurance) of any Real Estate of any Credit Party or any Subsidiary of any Credit Party;

(g) promptly following any request therefor, information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act or other applicable anti-money laundering laws; and

(h) promptly, such additional business, financial, corporate affairs, perfection certificates and other information as Agent may from time to time reasonably request.

5.3 Notices. The Borrower Representative shall notify promptly Agent (and Agent shall thereafter notify each Lender) of each of the following (and in no event later than three (3) Business Days after a Responsible Officer becomes aware thereof):

(a) the occurrence or existence of any Default or Event of Default;

(b) any breach or non-performance of, or any default under, (x) any agreement or document governing Material Indebtedness or (y) any Contractual Obligation of any Credit Party or any Subsidiary of any Credit Party, or any violation of, or non-compliance with, any Requirement of Law that in the case of this clause (y) would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect, and in the case of clauses (x) and (y) including a description of such breach, non-performance, default, violation or non-compliance and the steps, if any, such Person has taken, is taking or proposes to take in respect thereof;

(c) any dispute, litigation, investigation, proceeding or suspension which may exist at any time between any Credit Party or any Subsidiary of any Credit Party and any Governmental Authority which would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect;

(d) the commencement of, or any material development in, any litigation or proceeding affecting any Credit Party, any Subsidiary of any Credit Party or any of their respective property (i) in which the amount of damages claimed is \$5,000,000 or more, (ii) which would reasonably be expected to have a Material Adverse Effect, (iii) which alleges potential or actual material violations of any Public Health Law by any Credit Party or any Subsidiary of any Credit Party, or (iv) in which the relief sought is an injunction or other stay of the performance of this Agreement or any other Loan Document; or the receipt of any subpoena from, or notice of an investigation by, any Governmental Authority;

(e) (i) the receipt by any Credit Party or any Subsidiary of any Credit Party of any notice of violation of or potential liability or similar notice under any Environmental Laws, the subject matter of which notice would reasonably be expected to result in Material Environmental Liabilities, (ii)(A) unpermitted Releases, (B) the existence of any condition that could reasonably be expected to result in Environmental Liabilities or violations of any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand, dispute alleging Environmental Liabilities or a violation of any Environmental Laws which in the case of clauses (A), (B) and (C) above, in the aggregate for all such clauses, would reasonably be expected to result in Material Environmental Liabilities, (iii) the receipt by any Credit Party of notification that any Property of any Credit Party is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iv) any proposed acquisition or lease of Real Estate, if such acquisition or lease would have a reasonable likelihood of resulting in Material Environmental Liabilities;

(f) (x) (i) on or prior to any filing by any Credit Party or a Subsidiary of a Credit Party, or promptly upon a Credit Party obtaining knowledge of the filing by any ERISA Affiliate, of any notice of any reportable event under Section 4043 of ERISA or intent to terminate any Title IV Plan, a copy of such notice, (ii) promptly, and in any event within ten (10) days, after any officer of any Credit Party or a Subsidiary of a Credit Party knows or has reason to know that a request for a minimum funding waiver under Sections 412 or 430 of the Code or Section 302 of ERISA has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto, (iii) promptly, and in any event within ten (10) days after any officer of any Credit Party or any Subsidiary of a Credit Party knows or has reason to know that an ERISA Event will or has occurred that could reasonably be expected to result in material liability to a

Credit Party or a Subsidiary of a Credit Party, a notice describing the ERISA Event and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notices received from or filed with the PBGC, IRS, Multiemployer Plan, Title IV Plan, or other Employee Benefit Plan pertaining thereto, (iv) the aggregate present value of the Unfunded Benefit Liabilities under all Title IV Plans has, in any year, increased to an amount in excess of \$1,000,000, (v) any ERISA Event occurs with respect to a Multiemployer Plan which presents a material risk of a partial or complete withdrawal (as described in Section 4203 or 4205 of ERISA) by any Credit Party, any of their Subsidiaries or any of their respective ERISA Affiliates from such Multiemployer Plan and such withdrawal is reasonably expected to trigger withdrawal liability payments in any year in excess of \$1,000,000, (vi) any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates is in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan, (vii) the potential withdrawal liability (as determined in accordance with Title IV of ERISA) of any Credit Party, any of its Subsidiaries and their respective ERISA Affiliates with respect to all Multiemployer Plans has in any year increased to an amount in excess of \$1,000,000, or (viii) there is an action brought against any Credit Party, any Subsidiary of a Credit Party or any of their respective ERISA Affiliates under Section 502 of ERISA with respect to its failure to comply with Section 515 of ERISA, a certificate of the president or chief financial officer of the Credit Party setting forth the details of each of the events described in clauses (iv) through (viii) above as applicable and the action which the Credit Party, any of its Subsidiaries or their respective ERISA Affiliates proposes to take with respect thereto, together with a copy of any notice or filing from the PBGC or which may be required by the PBGC or other agency of the United States government with respect to each of the events described in clauses (iv) through (viii) above, as applicable; or (y) as soon as possible and in any event within ten (10) Business Days after the receipt by any Credit Party (or to the knowledge of any Credit Party, after receipt by any of its Subsidiaries or any of their respective ERISA Affiliates) of a demand letter from the PBGC notifying the Credit Party, its Subsidiaries or their respective ERISA Affiliates of its decision finding any material liability, a copy of such letter, together with a certificate of the president or chief financial officer of the Credit Party setting forth the action which the Credit Party, its Subsidiaries or their respective ERISA Affiliates propose to take with respect thereto;

(g) any Material Adverse Effect subsequent to the date of the most recent audited financial statements delivered to Agent and Lenders pursuant to this Agreement;

(h) any material changes in accounting policies or financial reporting practices by any Credit Party or any Subsidiary of any Credit Party;

(i) any event reasonably expected to result in a mandatory prepayment of the Obligations pursuant to Section 2.8 (other than Section 2.8(e));

(j) (i) any notice that any Governmental Authority is limiting, suspending or revoking any Regulatory Permits, changing the market classification, distribution pathway or parameters, or labeling of the Products of the Credit Parties or their respective Subsidiaries, or considering any of the foregoing; (ii) any Credit Party or any of its Subsidiaries becoming subject to any administrative or regulatory action, warning letter, notice of violation letter, Form FDA 483 observation classified by FDA as an Official Action Indicated, or any Product of any Credit Party or any of its Subsidiaries being seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any Product are pending or threatened against the Credit Parties or their respective Subsidiaries; and (iii) any voluntary withdrawal or recall of any Product by any Credit Party or any of its Subsidiaries that generates at least \$5,000,000 in revenue per Fiscal Year or which would, in the aggregate, have a Material Adverse Effect; and

(k) any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification.

Each notice pursuant to this Section shall be an Electronic Transmission accompanied by a statement by a Responsible Officer of the Borrower Representative, on behalf of the Borrowers, setting forth details of the occurrence referred to therein, and stating what action the Borrowers or other Person proposes to take with respect thereto and at what time. Each notice under Section 5.3(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been breached or violated.

5.4 Preservation of Corporate Existence, Etc. Each Credit Party shall, and shall cause each of its Subsidiaries to:

(a) preserve and maintain in full force and effect its organizational existence and good standing under the laws of its jurisdiction of incorporation, organization or formation, as applicable, except as permitted by Section 6.3; and

(b) preserve and maintain its rights (charter and statutory), privileges, franchises and Permits necessary or desirable in the normal conduct of its business except as permitted by Sections 6.2 and 6.3 and except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.5 Maintenance of Property. Each Credit Party shall, except as otherwise permitted by this Agreement, maintain, and shall cause each of its Subsidiaries to maintain, and preserve all its Property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted and shall make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.6 Insurance. The Credit Parties shall, and shall cause each of their Subsidiaries to, maintain with financially sound and reputable insurance companies insurance with respect to their assets, properties and business, against such hazards and liabilities, of such types and in such amounts, as is customarily maintained by companies in the same or similar businesses similarly situated, including Flood Insurance. Each such policy of insurance shall (i) in the case of each liability policy, name Agent on behalf of the Secured Parties as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy contain a loss payable clause or endorsement that names Agent, on behalf of the Secured Parties, as the loss payee thereunder and, to the extent available, provide for at least thirty (30) days' prior written notice to Agent of any modification or cancellation of such policy (or ten (10) days' prior written notice in the case of the failure to pay any premiums thereunder). A true and complete listing of such insurance, including issuers, coverages and deductibles, shall be provided to Agent promptly following Agent's request. Notwithstanding the requirements above, Flood Insurance shall not be required for (x) Real Estate not located in a Special Flood Hazard Area, or (y) Real Estate located in a Special Flood Hazard Area in a community that does not participate in the National Flood Insurance Program.

5.7 Payment of Tax Obligations. Each Credit Party shall, and shall cause each of its Subsidiaries to, pay, discharge and perform as the same shall become due and payable or required to be performed all material Tax liabilities, assessments and governmental charges or levies upon it or its Property, unless the

same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the enforcement of any Lien and for which adequate reserves in accordance with GAAP are being maintained by such Person.

5.8 Compliance with Laws. Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, except where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Each Credit Party shall maintain in effect and enforce policies and procedures designed to ensure compliance by the Credit Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

5.9 Inspection of Property and Books and Records. Each Credit Party shall, and shall cause each of its Subsidiaries to, with respect to each owned, leased, or controlled property, during normal business hours and upon reasonable advance notice (unless an Event of Default shall have occurred and be continuing, in which event no notice shall be required and Agent shall have access at any and all times during the continuance thereof): (a) provide access to such property to Agent and any of its Related Persons, as frequently as Agent reasonably determines to be appropriate; and (b) permit Agent and any of its Related Persons to conduct field examinations, appraise, inspect, and make extracts and copies from all of such Credit Party's books and records, and evaluate and conduct appraisals and evaluations in any manner and through any medium that Agent considers advisable, in each instance, at the Credit Parties' expense; provided the Credit Parties shall only be obligated to reimburse Agent for the expenses of one such appraisal, evaluation and inspection per calendar year or more frequently if an Event of Default has occurred and is continuing. Any Lender may accompany Agent or its Related Persons in connection with any inspection at such Lender's expense.

5.10 Use of Proceeds. The Borrowers shall use the proceeds of (a) the initial Term Loans (i) first, to refinance on the Closing Date, Prior Indebtedness, (ii) to pay fees, costs and expenses required to be paid pursuant to Section 3.1, and (iii) for working capital, capital expenditures and other general corporate purposes not in contravention of any Requirement of Law and not in violation of this Agreement (including Permitted Acquisitions and any other transaction permitted hereunder), and (b) the Revolving Loans and Swing Loans funded after the Closing Date for working capital and general corporate purposes of Amphastar and its Subsidiaries not in contravention of any Requirement of Law and not in violation of this Agreement (including Permitted Acquisitions and any other transaction permitted hereunder); provided, however, in no event may proceeds of Revolving Loans or Swing Loans be used, directly or indirectly, to make an optional prepayment of Term Loans. The Borrowers shall use proceeds of Incremental Facilities solely as provided in Section 2.1(e)(ii)(E). No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, use any Loan proceeds, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of any Credit Party or others incurred to purchase or carry Margin Stock.

5.11 Cash Management Systems. Each Credit Party shall enter into, and cause each depository, securities intermediary or commodities intermediary to enter into, Control Agreements with respect to each deposit, securities, commodity or similar account maintained by such Person (other than (a) any payroll account so long as such payroll account is a zero balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same, (b) petty cash accounts, amounts on deposit in which do not exceed \$1,000,000 in the aggregate at any one time, (c) accounts domiciled outside of the U.S. which are otherwise subject to a first priority perfected lien in favor of the Agent for the benefit of the Secured Parties and (d) withholding tax and fiduciary accounts (such excluded accounts, "**Excluded Accounts**")) as of and after the Closing Date; provided, it is agreed and understood that (A) the Credit Parties shall have until the date that is ninety (90) days following the

Closing Date or the closing date of such Permitted Acquisition, as applicable (or such later date as may be agreed to by Agent in its sole discretion) to comply with the provisions of this Section 5.11 with regard to accounts (other than Excluded Accounts) of the Credit Parties existing on the Closing Date or acquired in connection with such Permitted Acquisition, as applicable and (B) during the periods described in clause (A), the absence of a Control Agreement as to cash or Cash Equivalents in the applicable accounts referred to therein shall not (in and of itself) prevent the cash or Cash Equivalents therein from being netted in the calculation of Consolidated Total Net Leverage Ratio.

5.12 Reserved.

5.13 Further Assurances.

(a) Each Credit Party shall ensure that all written information, exhibits and reports furnished to Agent or the Lenders (other than projections, budgets, financial estimates and other forward looking information and information of a general economic or general industry nature), when taken as a whole, do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which made, and will promptly disclose to Agent and the Lenders and correct any material defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof.

(b) Promptly upon request by Agent, the Credit Parties shall (and, subject to the limitations set forth herein and in the Collateral Documents, shall cause each of their Subsidiaries to) take such additional actions and execute such documents as Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to subject to the Liens created by any of the Collateral Documents any of the Properties, rights or interests covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and (to the extent required hereby) priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iv) to better assure, grant, preserve, protect and confirm to the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document.

Without limiting the generality of the foregoing and except as otherwise approved in writing by Required Lenders, the Credit Parties shall cause each of their Subsidiaries (other than Excluded Subsidiaries) promptly after formation or acquisition thereof, to guaranty the Obligations and to cause each such Subsidiary to grant to Agent, for the benefit of the Secured Parties, a security interest in, subject to the limitations set forth herein and in the Collateral Documents, all of such Subsidiary's Property to secure such guaranty.

Furthermore, the Borrower Representative shall notify promptly Agent of the issuance by or to any Credit Party of any Stock and, except as otherwise approved in writing by Required Lenders, each Credit Party shall pledge all of the Stock of each of its Subsidiaries to Agent, for the benefit of the Secured Parties, to secure the Obligations, promptly after formation or acquisition of such Subsidiary.

The Credit Parties shall deliver, or cause to be delivered, to Agent, appropriate resolutions, secretary certificates, certified Organization Documents and, if requested by Agent, legal opinions relating to the matters described in this Section 5.13 (which opinions shall be in form and substance reasonably acceptable to Agent and, to the extent applicable, substantially similar to the opinions delivered on the Closing Date), in each instance with respect to each Credit Party formed or acquired, and each Credit Party or Person (other than a Credit Party) whose Stock is being pledged, after the Closing Date. In connection with each pledge of Stock, the Credit Parties shall deliver, or cause to be delivered, to Agent, irrevocable proxies and stock powers and/or assignments, as applicable, duly executed in blank. In the event any Credit Party acquires

fee title to any Real Estate with a fair market value in excess of \$2,000,000 (other than any Excluded Real Estate), within sixty (60) days after (or such later date as may be agreed by Agent in its sole discretion) such acquisition, such Person shall execute and/or deliver, or cause to be executed and/or delivered, to Agent, (w) an appraisal complying with FIRREA, (x) a fully executed Mortgage, in form and substance reasonably satisfactory to Agent together with an A.L.T.A. lender's title insurance policy issued by a title insurer reasonably satisfactory to Agent, in form and substance and in an amount reasonably satisfactory to Agent insuring that the Mortgage is a valid and enforceable first priority Lien on the respective property, free and clear of all defects, encumbrances and Liens other than Permitted Liens, and (y) then current A.L.T.A. surveys, certified to Agent by a licensed surveyor sufficient to allow the issuer of the lender's title insurance policy to issue such policy without a survey exception. In the event any Credit Party or any Subsidiary of any Credit Party acquires any Real Estate required to be subject to a Mortgage pursuant to the foregoing sentence, at Agent's request, the Credit Parties shall cause to be delivered to Agent, within sixty (60) days (or such later date as may be agreed by Agent in its sole discretion) after such acquisition, Environmental Assessments prepared by a qualified firm reasonably acceptable to Agent, in form and substance reasonably satisfactory to Agent. In addition to the obligations set forth in Section 5.6(a), the Credit Parties shall, in connection with the grant to Agent for the benefit of the Secured Parties of any Mortgage with respect to any Real Estate, and prior to or concurrently with such grant, provide all documents and information required by, and otherwise comply with, the Flood Insurance Requirements as they apply to the applicable Real Estate. In addition, within forty-five (45) days (or such longer period as the Agent may agree) after written notice from Agent to the Credit Parties that any Real Estate (that is or is required to be subject to a Mortgage) is located in a Special Flood Hazard Area, the Credit Parties shall satisfy (to the extent theretofore not previously satisfied) the Flood Insurance Requirements as to the applicable Real Estate. Without limitation of the foregoing, each Credit Party shall, and shall cause each of its Subsidiaries to, cooperate with Agent in connection with compliance with laws governing the National Flood Insurance Program, including by providing any information reasonably required by Agent in order to confirm compliance with such laws.

(c) Without limiting the generality of the foregoing, to the extent reasonably necessary to maintain the continuing priority of the Lien of any existing Mortgages as security for the Obligations in connection with the incurrence of an Incremental Facility, as determined by Agent in its reasonable discretion, the applicable Credit Party to any Mortgages shall within sixty (60) days of such funding or incurrence (or such later date as agreed by Agent) (i) enter into and deliver to Agent, at the direction and in the reasonable discretion of Agent, a mortgage modification or new Mortgage in proper form for recording in the relevant jurisdiction and in a form reasonably satisfactory to Agent (and to the extent applicable, substantially similar to the form of the Mortgage on the applicable Real Estate theretofore held by Agent), (ii) cause to be delivered to Agent for the benefit of the Secured Parties an endorsement to the title insurance policy, date down(s) or other evidence reasonably satisfactory to Agent insuring that the priority of the Lien of the Mortgages as security for the Obligations has not changed and confirming and/or insuring that since the issuance of the title insurance policy there has been no change in the condition of title and there are no intervening liens or encumbrances which may then or thereafter take priority over the Lien of the Mortgages (other than those expressly permitted by Section 6.1(c)) and (iii) deliver, at the request of Agent, to Agent and/or all other relevant third parties, all other items reasonably necessary to maintain the continuing priority (to the extent required by this Agreement) of the Lien of the Mortgages as security for the Obligations.

(d) reserved.

(e) Without limiting the foregoing, each Credit Party shall, promptly upon receipt of request from Agent, cause the performance of such environmental audits and assessments, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as Agent may from time to time reasonably request. Such audits, assessments and reports shall be conducted and prepared by reputable environmental consulting firms reasonably acceptable to Agent and shall be in form and substance reasonably acceptable to Agent.

(f) Without limiting the foregoing, the Credit Parties shall cause a Borrower to be the named insured under any representation and warranty insurance obtained in connection with any Permitted Acquisition and such insurance policy shall be collateralized assigned to Agent in a manner reasonably satisfactory to Agent.

(g) Without limiting the foregoing, in the event that any Credit Party Divides itself into two or more Persons, any Persons formed as a result of such Division, unless otherwise consented to by the Agent, shall be required to comply with the requirements and obligations set forth in this Section 5.13 and the other future assurances obligations set forth in the Loan Documents and become a Borrower or Guarantor as required by this Agreement or the other Loan Documents.

5.14 Environmental Matters. Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with, and maintain its Real Estate, whether owned, leased, subleased or otherwise operated or occupied, in compliance with all applicable Environmental Laws or that is required by orders and directives of any Governmental Authority except where the failure to comply would not reasonably be expected to, individually or in the aggregate, result in a Material Environmental Liability.

5.15 Regulatory Matters. Each Credit Party and its Subsidiaries shall comply with all Pharma Laws and their implementation by any applicable Governmental Authority and all lawful requests of any Governmental Authority applicable to its Products. All Products developed, manufactured, tested, investigated, distributed, marketed, or sold by or on behalf of any Credit Party or any of its Subsidiaries that are subject to the jurisdiction of any Governmental Authority shall be developed, tested, manufactured, investigated, distributed, marketed, and sold in compliance with the Pharma Laws and any other Requirements of Law, including, without limitation, product approval or premarket notification, good manufacturing practices, labeling, advertising, record-keeping, and adverse event reporting, and have been and are being developed, manufactured, tested, investigated, distributed, marketed, and sold in compliance with Pharma Laws and all other Requirements of Law.

5.16 Post-Closing Obligations. The Credit Parties will take each of the actions set forth on Schedule 5.16 within the time period prescribed therefor on such schedule (as such time period may be extended by Agent in its sole discretion).

ARTICLE VI

NEGATIVE COVENANTS

Each Credit Party covenants and agrees that until the Facility Termination Date:

6.1 Limitation on Liens. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its Property, whether now owned or hereafter acquired, other than the following (“**Permitted Liens**”):

(a) any Lien existing on the Property of a Credit Party or a Subsidiary of a Credit Party on the Closing Date and set forth in Schedule 6.1 securing Indebtedness outstanding on such date and permitted by Section 6.5(b), including replacement Liens on the Property currently subject to such Liens securing Indebtedness permitted by Section 6.5(b);

(b) any Lien created under any Loan Document;

(c) Liens for Taxes (i) which are not more than thirty (30) days past due or remain payable without penalty, or (ii) the non-payment of which is permitted by Section 5.7;

(d) carriers’, warehousemen’s, mechanics’, landlords’, materialmen’s, repairmen’s or other similar Liens arising in the ordinary course of business which are not delinquent for more than ninety (90) days or remain payable without penalty or which are being contested in good faith and by appropriate proceedings diligently prosecuted, which proceedings have the effect of preventing the forfeiture or sale of the Property subject thereto and for which adequate reserves in accordance with GAAP are being maintained;

(e) Liens (other than any Lien imposed by ERISA) consisting of pledges or deposits required in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation or to secure the performance of tenders, statutory obligations, surety, stay, customs and appeals bonds, bids, leases, governmental contract, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Consolidated Funded Indebtedness) or to secure liability to insurance carriers;

(f) Liens consisting of judgment or judicial attachment liens (other than for payment of Taxes), provided that the enforcement of such Liens is effectively stayed and the existence of such judgment does not constitute an Event of Default under Section 8.1(h);

(g) easements, rights of way, zoning, covenants, conditions, restrictions, encroachments, protrusions, title exceptions, survey exceptions, minor defects or other irregularities in title, and other similar encumbrances incurred in the ordinary course of business which, either individually or in the aggregate, do not in any case materially detract from the value of the Property subject thereto or interfere in any material respect with the ordinary conduct of the businesses of any Credit Party or any Subsidiary of any Credit Party;

(h) Liens on any Property acquired or held by any Credit Party or any Subsidiary of any Credit Party securing Indebtedness incurred or assumed for the purpose of financing (or refinancing) all or any part of the cost of acquiring such Property and permitted under Section 6.5(c); provided that (i) such Lien attaches solely to the Property so acquired in such transaction and the proceeds thereof and (ii) the principal amount of the Indebtedness secured thereby does not exceed 100% of the cost of such Property;

(i) Liens securing Capital Lease Obligations permitted under Section 6.5(c);

(j) any interest or title of a lessor, sublessor, licensor or sublicensor under any lease or license not prohibited by this Agreement;

(k) Liens arising from the filing of precautionary uniform commercial code financing statements with respect to any lease not prohibited by this Agreement;

(l) non-exclusive licenses and sublicenses granted by a Credit Party or any Subsidiary of a Credit Party and leases and subleases (by a Credit Party or any Subsidiary of a Credit Party as lessor or sublessor) to third parties in the ordinary course of business not interfering with the business of the Credit Parties or any of their Subsidiaries, or with respect to assets that are not material to the business of the Credit Parties;

(m) Liens in favor of collecting banks arising by operation of law under Section 4-210 of the UCC or, with respect to collecting banks located in the State of New York, under Section 4-208 of the UCC;

(n) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(o) Liens arising out of consignment or similar arrangements for the sale of goods entered into by a Borrower or any Subsidiary of a Borrower in the ordinary course of business;

(p) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(q) Liens on Property acquired pursuant to a Permitted Acquisition, or on Property of a Subsidiary of a Borrower in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition; provided that (i) any Indebtedness that is secured by such Liens is permitted to exist under Section 6.5(f), and (ii) such Liens are not incurred in connection with, or in contemplation or anticipation of, such Permitted Acquisition and do not attach to any Property of Amphastar or any of its Subsidiaries;

(r) Liens on unearned insurance premiums securing the financing thereof to the extent permitted under Section 6.5(i);

(s) Liens solely on cash earnest money deposits made by the Borrowers or any of their Subsidiaries in connection with any letter of intent or purchase agreement for an Acquisition or other Investment that would be permitted hereunder;

(t) Liens on Property of Subsidiaries that are not Credit Parties securing Indebtedness or other obligations permitted to be incurred by such Subsidiaries hereunder; provided, that, such Liens do not at any time encumber Property of any Credit Party;

(u) reserved; and

(v) other Liens securing obligations (other than Indebtedness for borrowed money) otherwise permitted hereunder not exceeding \$5,000,000 in the aggregate.

Each category of Liens (other than the Liens securing the Obligations which shall at all times be deemed to be outstanding pursuant to Section 6.1(a)) set forth above shall be deemed to be cumulative and for purposes of determining compliance with this Section 6.1, in the event that any Lien at any time, whether at the time of incurrence or subsequently, meets the criteria of more than one of the categories described above, the Borrower Representative, in its sole discretion, may classify or reclassify (or later divide, classify or reclassify) such Lien in any one or more of the types of Liens described above and shall only be required to include the amount and type of such Lien in such of the above clauses as determined by the Borrower Representative at such time.

6.2 Disposition of Assets. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly Dispose of (whether in one or a series of transactions) any Property (including the Stock of any Subsidiary of any Credit Party, whether in a public or private offering or otherwise, and accounts and notes receivable, with or without recourse), except:

(a) Dispositions of Inventory, goods or services or of worn-out, obsolete, damaged or surplus equipment, all in the ordinary course of business;

(b) Dispositions not otherwise permitted hereunder which are made for fair market value and the mandatory prepayment in the amount of the Net Proceeds of such disposition is made if and to the extent required by Section 2.8; provided, that (i) at the time of any Disposition, no Event of Default shall exist or shall result from such Disposition, (ii) not less than 75% of the aggregate sales price from such disposition shall be paid in cash, (iii) the aggregate fair market value of all assets so sold by the Credit Parties and their Subsidiaries, together, shall not exceed in any Fiscal Year \$10,000,000 and (iv) after giving effect to such Disposition, the Credit Parties are in compliance on a pro forma basis with the covenants set forth in Article VII (whether or not then in effect), recomputed for the most recent Fiscal Quarter for which financial statements have been delivered (or are required to have been delivered) under Section 5.1;

(c) (i) Dispositions of Cash Equivalents in the ordinary course of business made to a Person that is not an Affiliate of any Credit Party and (ii) conversions of Cash Equivalents into cash or other Cash Equivalents;

(d) transactions permitted under Section 6.1(l);

(e) Investments permitted under Section 6.4, to the extent such Investment constitutes a Disposition;

(f) the sale or issuance of (i) the Stock in a Borrower or a Subsidiary to any Credit Party or (ii) the Stock of a Foreign Subsidiary that is not a Credit Party to another Foreign Subsidiary that is not a Credit Party;

(g) the transfer of Property (i) by a Credit Party to a Credit Party or (ii) by a Subsidiary that is not a Credit Party to (A) a Credit Party for no more than fair market value or (B) any other Subsidiary;

(h) any Foreign Subsidiary may issue Stock to qualified directors where required by or to satisfy any applicable Requirement of Law, including any Requirement of Law with respect to ownership of Stock in Foreign Subsidiaries;

(i) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(j) transactions permitted by Section 6.3;

(k) Dispositions of past due accounts receivable in the ordinary course of business (including any discount and/or forgiveness thereof) or, in the case of accounts receivable in default, in connection with the collection or compromise thereof and in any event, not involving any securitization thereof;

(l) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business;

(m) Dispositions of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding);

(n) the termination or unwinding of any Rate Contract; and

(o) sales, exclusive licenses and sublicenses, transfers, abandonments, allowances to lapse or other dispositions of Intellectual Property (i) where such Intellectual Property is immaterial to or no longer used in or necessary for the conduct of the business of the Credit Parties or any of its Subsidiaries or (ii) in the ordinary course of business.

Any reference in this Section 6.2 or in Section 6.3 to a combination, merger, consolidation, Disposition, dissolution, liquidation or transfer shall be deemed to apply to a Division (or the unwinding of such a Division) as if it were a combination, merger, consolidation, Disposition, dissolution, transfer or similar term, as applicable, to or with a separate Person.

6.3 Consolidations and Mergers. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, merge with, consolidate with or into, dissolve or liquidate into or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except upon not less than five (5) Business Days prior written notice to Agent, (a) any Subsidiary of a Borrower may merge with, consolidate with or into, dissolve or liquidate into a Wholly-Owned Subsidiary of a Borrower which is a Credit Party, provided that such Wholly-Owned Subsidiary which is a Credit Party shall be the continuing or surviving entity and all actions reasonably required by Agent, including actions required to maintain perfected Liens on the Stock of the surviving entity and other Collateral in favor of Agent, shall have been completed; provided, if a Credit Party is a constituent entity in such merger, dissolution or liquidation, a Credit Party must be the continuing or surviving entity, (b) any Foreign Subsidiary may merge with or dissolve or liquidate into another Foreign Subsidiary provided if a Foreign Subsidiary which is not an Excluded Foreign Subsidiary is a constituent entity in such merger, dissolution or liquidation, a Foreign Subsidiary which is not an Excluded Foreign Subsidiary shall be the continuing or surviving entity and (c) any other Subsidiary of a Borrower (other than another Borrower) may liquidate or dissolve if (i) the Borrower Representative determines in good faith that such liquidation or dissolution is in the best interests of the Borrowers and it is not materially disadvantageous to the Lenders and (ii) to the extent such Subsidiary is a Guarantor, any assets or business not otherwise Disposed of in accordance with Section 6.2 or, in the case of any such business, discontinued, shall be transferred to, or otherwise owned or conducted by, a Credit Party after giving effect to such liquidation or dissolution.

6.4 Loans and Investments. No Credit Party shall and no Credit Party shall suffer or permit any of its Subsidiaries to (i) purchase or acquire any Stock, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, or (ii) make any Acquisitions, or (iii) make, purchase or acquire any advance, loan, extension of credit (other than trade payables in the ordinary course of business) or capital contribution to or any other investment in, any Person including a Borrower, any Affiliate of a Borrower or any Subsidiary of a Borrower (the items described in clauses (i), (ii) and (iii) are referred to as “**Investments**”), except for:

- (a) Investments in cash and Cash Equivalents;
- (b) Investments consisting of (i) reserved, (ii) extensions of credit or capital contributions by any Credit Party to or in any other then existing Credit Party, (iii) extensions of credit or capital contributions by a Borrower or any other Credit Party to or in any then existing Subsidiaries of a Borrower which are not Credit Parties not to exceed \$5,000,000 in the aggregate at any time outstanding for all such extensions of credit and capital contributions; provided, if the Investments described in foregoing clauses (i), (ii) and (iii) are evidenced by notes, such notes shall be pledged to Agent, for the benefit of the Secured Parties, and have such terms as Agent may reasonably require, (iv) extensions of credit or capital contributions by a Subsidiary of a Borrower which is not a Credit Party to or in another then existing Subsidiary of a Borrower which is not a Credit Party; and (v) extensions of credit by an Excluded Foreign Subsidiary to or in a then existing Credit Party; provided, that any such extensions of credit are subordinated to the Obligations on terms reasonably satisfactory to Agent.
- (c) loans and advances to employees in the ordinary course of business not to exceed \$3,000,000 in the aggregate at any time outstanding;
- (d) Investments received as the non-cash portion of consideration received in connection with transactions permitted pursuant to Section 6.2(b);
- (e) Investments acquired in connection with the settlement of delinquent Accounts in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or customers;
- (f) Investments existing on the Closing Date and set forth on Schedule 6.4;
- (g) Investments comprised of Indebtedness permitted by Section 6.5(o);
- (h) Subsidiaries of a Borrower may be established or created so long as the Credit Parties and such Subsidiary comply with the provisions of Section 5.13 to the extent applicable;
- (i) Permitted Acquisitions;
- (j) Investments in Subsidiaries that are not Credit Parties the proceeds of which are used solely to fund Consolidated Capital Expenditures of up to (i) \$30,000,000 in any Fiscal Year and (ii) \$85,000,000 in the aggregate during the term of this Agreement;
- (k) Investments by the Borrower Representative in an aggregate not to exceed \$25,000,000 solely for the purpose of the acquisition by the Borrower Representative of any outstanding Stock of Amphastar Nanjing Pharmaceuticals, Inc. that is not owned by the Borrower Representative as of the Closing Date;
- (l) extensions of trade credit by the Credit Parties and their Subsidiaries in the ordinary course of business;
- (m) deposits made by the Credit Parties and their Subsidiaries in the ordinary course of business to secure operating leases or otherwise, in each case, to the extent such deposits constitute Permitted Liens;

(l) Investments of any Person in existence at the time such Person becomes a Credit Party or a Subsidiary of a Credit Party; provided such Investment was not made in connection with or anticipation of such Person becoming a Subsidiary of the Credit Parties;

(m) Investments consisting of non-cash loans made by Amphastar to officers, directors and employees of a Credit Party which are used by such Persons to purchase simultaneously Stock or Stock equivalents of Amphastar; and

(n) other Investments not to exceed \$5,000,000 in the aggregate at any time outstanding; provided that before and immediately after giving effect to such Investment, no Default or Event of Default has occurred and is continuing.

Each category of Investment set forth above shall be deemed to be cumulative and for purposes of determining compliance with this Section 6.4, in the event that an Investment (or any portion thereof) at any time, whether at the time of making thereof or subsequently, meets the criteria of more than one of the categories described above, the Borrower Representative, in its sole discretion, may classify or reclassify (or later divide, classify or reclassify) such Investment (or any portion thereof) in any one or more of the types of Investments described above and shall only be required to include the amount and type of such Investment in such of the above clauses as determined by the Borrower at such time.

6.5 Limitation on Indebtedness. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, create, incur, assume, permit to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness existing on the Closing Date and set forth in Schedule 6.5 including Permitted Refinancings thereof;

(c) Indebtedness not to exceed \$10,000,000 in the aggregate at any time outstanding, consisting of Capital Lease Obligations or secured by Liens permitted by Section 6.1(h) or Section 6.1(i) and Permitted Refinancings thereof;

(d) unsecured intercompany Indebtedness permitted pursuant to Section 6.4(b);

(e) reserved;

(f) Indebtedness of a Subsidiary of a Borrower acquired pursuant to a Permitted Acquisition (or a similar Investment permitted by Section 6.4) or Indebtedness of a Target assumed at the time of a Permitted Acquisition of or such other Investment in such Target; provided that (i) such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Permitted Acquisition or other Investment and (ii) the aggregate principal amount of all Indebtedness permitted by this Section 6.5(f) shall not at any time outstanding exceed \$5,000,000;

(g) reserved;

(h) unsecured Indebtedness of Amphastar or any of its Subsidiaries consisting of Contingent Acquisition Consideration; provided that the maximum aggregate amount payable with respect to all such Contingent Acquisition Consideration does not exceed \$10,000,000 in the aggregate at any time outstanding (assuming the remaining maximum performance standards

related thereto are satisfied, except to the extent all or any portion thereof becomes a fixed, matured or earned amount, in which case such amount shall be deemed the actual amount of such Contingent Acquisition Consideration);

- (i) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;
- (j) reserved;
- (k) endorsements for collection or deposit in the ordinary course of business;
- (l) Rate Contracts entered into in the ordinary course of business for bona fide hedging purposes and not for speculation;
- (m) Indebtedness arising under indemnity agreements to title insurers to cause such title insurers to issue to Agent title insurance policies;
- (n) Indebtedness arising with respect to customary indemnification obligations and purchase price adjustments in favor of (i) sellers in connection with Acquisitions or similar Investments permitted hereunder and (ii) purchasers in connection with Dispositions permitted under Section 6.2(b);
- (o) Indebtedness arising under guaranties made in the ordinary course of business of obligations of any Credit Party, which obligations are otherwise permitted hereunder; provided that if such obligation is subordinated to the Obligations, such guaranty shall be subordinated to the same extent;
- (p) Indebtedness incurred in the ordinary course of business with respect to surety and appeals bonds, performance bonds and other similar obligations;
- (q) Indebtedness of Subsidiaries which are not Credit Parties in an aggregate outstanding amount not to exceed \$5,000,000;
- (r) Indebtedness consisting of promissory notes issued by Amphastar to any stockholder of Amphastar or any current or former director, officer, employee, member of management, manager or consultant of Amphastar, any other Borrower or any Subsidiary (or their respective immediate family members) to finance the purchase or redemption of Stock permitted by Section 6.8(b); and
- (s) other unsecured Indebtedness not exceeding in the aggregate at any time outstanding \$2,500,000.

For purposes of determining compliance with any restriction on the incurrence of Indebtedness, the principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred.

Each category of Indebtedness set forth above shall be deemed to be cumulative and for purposes of determining compliance with this Section 6.5, in the event that any Indebtedness (or any portion thereof) at any time, whether at the time of making thereof or subsequently, meets the criteria of more than one of the categories described above, the Borrower Representative, in its sole discretion, may classify or reclassify (or later divide, classify or reclassify) such Indebtedness (or any portion thereof) in any one or more of the

types of Indebtedness described above and shall only be required to include the amount and type of such Indebtedness in such of the above clauses as determined by the Borrower at such time.

6.6 Transactions with Affiliates. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (w) enter into any transaction with any Affiliate of the Borrowers or of any such Subsidiary (other than, in each case, transactions between or among Credit Parties) or any director (or similar official) of any of the foregoing, (x) pay any management, consulting or similar fees to any of the foregoing or (y) pay or reimburse any of the foregoing for any costs, expenses and similar items, except:

(a) (i) with respect to transactions between or among the Credit Parties and (ii) with respect to any other Affiliate or any other such Person as expressly permitted by Sections 6.4(b), 6.4(j), 6.4(k) and 6.8 of this Agreement;

(b) in the ordinary course of business and pursuant to the reasonable requirements of the business of such Credit Party or such Subsidiary upon fair and reasonable terms no less favorable to such Credit Party or such Subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of a Borrower or such Subsidiary; and

(c) payment of directors' fees and reimbursement of actual out-of-pocket expenses incurred in connection with attending board of director meetings not to exceed in the aggregate, with respect to all such items, \$1,000,000 in any Fiscal Year of the Borrowers.

6.7 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (a) any event that could result in the imposition of a Lien on any asset of a Credit Party or a Subsidiary of a Credit Party with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event, that would, in the aggregate with respect to (a) and (b), reasonably be expected to have a Material Adverse Effect.

6.8 Restricted Payments. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any Stock or (ii) purchase, redeem or otherwise acquire for value any Stock now or hereafter outstanding (the items described in clauses (i) and (ii) above are referred to as "**Restricted Payments**"); except that any Wholly-Owned Subsidiary of a Borrower may declare and pay dividends to a Borrower or any Wholly-Owned Subsidiary of a Borrower, and except that:

(a) Borrower Representative may declare and make dividend payments or other distributions payable solely in its Stock;

(b) the Borrowers may make Net Stock Repurchases in an aggregate amount not to exceed \$25,000,000 in any Fiscal Year; provided no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(c) the Borrowers may make additional Restricted Payments in an aggregate amount not to exceed \$5,000,000 in any Fiscal Year; provided no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(d) the Borrowers may make distributions, the proceeds of which are used to make cash payments in lieu of issuing fractional shares in connection with the exercise of warrants, options, or other securities convertible into or exchangeable for Stock.

6.9 Change in Business. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, engage in any line of business other than those lines of business carried on by it on the Closing Date and any business reasonably related, complementary or ancillary thereto.

6.10 Change in Structure. Except as expressly permitted under Section 6.3, no Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, amend any of its Organization Documents in any respect materially adverse to Agent or Lenders.

6.11 Changes in Accounting, Name and Jurisdiction of Organization. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP, (ii) change the Fiscal Year or method for determining Fiscal Quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party, (iii) change its name as it appears in official filings in its jurisdiction of organization or (iv) change its jurisdiction of organization or formation, in the case of clauses (iii) and (iv), without at least ten (10) days' prior written notice to Agent (or such shorter period as may be agreed by Agent in its sole discretion).

6.12 Limitation on Payments of Certain Indebtedness. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) make any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to Subordinated Indebtedness or unsecured Indebtedness or (ii) make any payment or prepayment of Contingent Acquisition Consideration (the items described in clauses (i) and (ii) above are referred to as "**Restricted Debt Payments**") except that:

(a) The Credit Parties may pay, as and when due and payable (i) required payments of regularly scheduled payments of interest, fees, penalties (if any) and other amounts owed in respect thereof (other than mandatory, voluntary or optional prepayments of principal thereof) and (ii) non-accelerated mandatory payments in respect of Subordinated Indebtedness, in each case solely to the extent permitted under the subordination terms with respect thereto;

(b) the Credit Parties may pay as and when due and payable, non-accelerated payments of Contingent Acquisition Consideration and unsecured Indebtedness provided that all of the following conditions are satisfied:

(i) no Default or Event of Default has occurred and is continuing or would arise as a result of such Restricted Debt Payment; and

(ii) after giving effect to such Restricted Debt Payment, on a pro forma basis as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered (or are required to have been delivered) pursuant to Section 5.1, the Credit Parties are in compliance with the covenants set forth in Article VII hereof; and the Credit Parties may make payments of intercompany Indebtedness permitted under Section 6.5.

6.13 Amendments to Certain Indebtedness.

No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries directly or indirectly to, change or amend the terms of any (i) Subordinated Indebtedness except to the extent permitted by the applicable subordination agreement or subordination terms or (ii) any other Subordinated Indebtedness not subject to a subordination agreement or other applicable subordination terms if the effect of such change or amendment is to: (A) increase the interest rate on such Indebtedness; (B) shorten the dates upon which payments of principal or interest are due on such Indebtedness; (C) add or change in a manner adverse to the Credit Parties any event of default or add or make more restrictive any covenant

with respect to such Indebtedness; (D) change in a manner adverse to the Credit Parties the prepayment provisions of such Indebtedness; (E) change the subordination provisions thereof (or the subordination terms of any guaranty thereof); or (F) change or amend any other term if such change or amendment would materially increase the obligations of the Credit Parties or confer additional material rights on the holder of such Indebtedness in a manner adverse to the Credit Parties, Agent or Lenders.

6.14 No Negative Pledges. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual restriction or encumbrance of any kind on the ability of any Credit Party or Subsidiary to pay dividends or make any other distribution on any of such Credit Party's or Subsidiary's Stock or to pay fees, including management fees, or make other payments and distributions to a Borrower or any other Credit Party, in each case except pursuant to this Agreement. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, directly or indirectly, enter into, assume or become subject to any Contractual Obligation prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of Agent, whether now owned or hereafter acquired except in connection with any document or instrument governing Liens permitted pursuant to Sections 6.1(h) and 6.1(i) provided that any such restriction contained therein relates only to the asset or assets subject to such permitted Liens.

6.15 OFAC; USA Patriot Act; Anti-Corruption Laws. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to fail to comply with the laws, regulations and executive orders referred to in Section 4.22. No Credit Party or Subsidiary, nor to the knowledge of the Credit Party, any director, officer, agent, employee, or other person acting on behalf of the Credit Party or any Subsidiary, will request or use the proceeds of any Loan or Letter of Credit, directly or indirectly, (A) for any payments to any Person, including any government 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, or otherwise take any action, directly or indirectly, that would result in a violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Person on the SDN List or a government of a Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Furthermore, the Credit Parties will not, directly or indirectly, use the proceeds of the transaction, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliate, joint venture partner or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person participating in the transaction of any Sanctions.

6.16 Sale-Leasebacks. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets.

6.17 Hazardous Materials. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, cause or suffer to exist any Release of any Hazardous Material at, to or from any Real Estate that would form the basis of Environmental Liabilities or violate Environmental Laws, other than such Environmental Liabilities or violations of Environmental Laws that would not, in the aggregate, reasonably be expected to result in Material Environmental Liabilities.

ARTICLE VII

FINANCIAL COVENANTS

Each Credit Party covenants and agrees that until the Facility Termination Date:

7.1 Consolidated Total Net Leverage Ratio. The Credit Parties shall not suffer or permit the Consolidated Total Net Leverage Ratio as of the last day of any Fiscal Quarter (commencing with the Fiscal Quarter ending December 31, 2021) to be greater than 2.50 to 1.00.

7.2 Consolidated Fixed Charge Coverage Ratio. The Credit Parties shall not suffer or permit the Consolidated Fixed Charge Coverage Ratio for any twelve month period ending at the end of each Fiscal Quarter (commencing with the Fiscal Quarter ending December 31, 2021) to be less than 1.25 to 1.00.

ARTICLE VIII

EVENTS OF DEFAULT

8.1 Event of Default. Any of the following shall constitute an “**Event of Default**”:

(a) Non-Payment. Any Credit Party fails (i) to pay when and as required to be paid herein, any amount of principal of any Loan, including after maturity of the Loans, or to pay any L/C Reimbursement Obligation or (ii) to pay within three (3) Business Days after the same shall become due, interest on any Loan, any fee or any other amount payable hereunder or pursuant to any other Loan Document; or

(b) Representation or Warranty. Any representation, warranty or certification by or on behalf of any Credit Party or any of its Subsidiaries made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by any such Person, or their respective Responsible Officers, furnished at any time under this Agreement, or in or under any other Loan Document, shall prove to have been incorrect in any material respect (without duplication of other materiality qualifiers contained therein) on or as of the date made or deemed made; or

(c) Specific Defaults. Any Credit Party fails to perform or observe any term, covenant or agreement contained in any of Section 1.3, 5.1, 5.2(a), or 5.2(b), 5.2(d), 5.3(a), 5.6, 5.10 or Article VI or Article VII hereof or the Fee Letters; or

(d) Other Defaults. Any Credit Party or Subsidiary of any Credit Party fails to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of thirty (30) days after the earlier to occur of (i) the date upon which a Responsible Officer of any Credit Party has actual knowledge of such default or (ii) the date upon which written notice thereof is given to the Borrower Representative by Agent or Required Lenders; or

(e) Cross-Default. Any Credit Party or any Subsidiary of any Credit Party (i) fails to make any payment in respect of any Material Indebtedness when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto on the date of such failure; or (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Material Indebtedness, if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Material Indebtedness or beneficiary or beneficiaries of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable (or otherwise required immediately to be prepaid, redeemed, purchased or defeased) prior to its stated maturity (without regard to any subordination terms with respect thereto) or cash collateral in respect thereof to be demanded; or

(f) Insolvency; Voluntary Proceedings. A Borrower, individually, ceases or fails, or the Credit Parties and their Subsidiaries on a consolidated basis, cease or fail, to be Solvent, or any Credit Party or any Subsidiary of any Credit Party: (i) generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) except as expressly permitted under Section 6.3, voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing; or

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against any Credit Party or any Subsidiary of any Credit Party, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of any such Person's Properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within sixty (60) days after commencement, filing or levy; (ii) any Credit Party or any Subsidiary of any Credit Party admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) any Credit Party or any Subsidiary of any Credit Party acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its Property or business; or

(h) Monetary Judgments. One or more judgments, non-interlocutory orders, decrees or arbitration awards shall be entered against any one or more of the Credit Parties or any of their respective Subsidiaries involving in the aggregate a liability of \$5,000,000 or more (excluding amounts covered by insurance to the extent the relevant independent third-party insurer has not denied coverage therefor), and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of thirty (30) days after the entry thereof; or

(i) Non-Monetary Judgments. One or more non-monetary judgments, orders or decrees shall be rendered against any one or more of the Credit Parties or any of their respective Subsidiaries which has or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, and 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

(j) Collateral. Any material provision of any Loan Document shall for any reason other than as expressly permitted hereunder or thereunder cease to be valid and binding on or enforceable against any Credit Party or any Subsidiary of any Credit Party thereto or any Credit Party or any Subsidiary of any Credit Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or any Collateral Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in the Collateral (to the extent that such perfection or priority is required hereby) purported to be covered thereby or such security interest shall for any reason (other than the failure of Agent to take any action within its control) cease to be a perfected and first priority security interest subject only to Permitted Liens; or

(k) Ownership. A Change of Control shall occur; or

(l) ERISA. One or more ERISA Events shall have occurred which, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect; or

(m) Invalidation of Subordination Provisions. Any provisions of any subordination agreement or any other agreement or instrument governing any Subordinated Indebtedness shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or any Person shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations or the Liens securing the Obligations, for any reason shall not have the priority contemplated by this Agreement or such subordination provisions.

(n) Regulatory. (i) Any Governmental Authority initiates enforcement action against any Credit Party or any of its Subsidiaries, or any suppliers that causes such Credit Party or Subsidiary to recall, withdraw, remove or discontinue marketing any of its Products which could reasonably be expected to result in aggregate liability and expense to the Credit Parties and their Subsidiaries of \$7,500,000 or more; (ii) any Governmental Authority issues a warning letter to any Credit Party or any of its Subsidiaries with respect to any Regulatory Matter which would reasonably be expected, in the aggregate, to have a Material Adverse Effect; (iii) any Credit Party or any of its Subsidiaries conducts a mandated or voluntary recall which could reasonably be expected to result in aggregate liability and expense to the Credit Parties and their Subsidiaries of \$7,500,000 or more; or (iv) any Credit Party or any of its Subsidiaries enters into a settlement agreement with the FDA or any other Governmental Authority or is assessed a fine by the FDA or any other Governmental Authority in any case that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of \$7,500,000 or more, or that would reasonably be expected to have a Material Adverse Effect.

8.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Agent may, and shall at the request of the Required Lenders:

(a) declare all or any portion of any one or more of the Commitments of each Lender to make Loans or of the L/C Issuer to Issue Letters of Credit to be suspended or terminated, whereupon all or such portion of such Commitments shall forthwith be suspended or terminated;

(b) declare all or any portion of the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable; without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Credit Party; and/or

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

provided, however, that upon the occurrence of any event specified in Section 8.1(f) or 8.1(g) above (in the case of clause (i) of Section 8.1(g) upon the expiration of the sixty (60) day period mentioned therein), the obligation of each Lender to make Loans and the obligation of the L/C Issuer to Issue Letters of Credit shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of Agent, any Lender or the L/C Issuer.

8.3 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

8.4 Cash Collateral for Letters of Credit. If an Event of Default has occurred and is continuing, this Agreement (or the Revolving Loan Commitment) shall be terminated for any reason or if otherwise required by the terms hereof, Agent may, and upon request of Required Revolving Lenders, shall, demand (which demand shall be deemed to have been delivered automatically upon any acceleration of the Loans and other obligations hereunder pursuant to Section 8.2), and the Borrowers shall thereupon deliver to Agent, to be held for the benefit of the L/C Issuer, Agent and the Lenders entitled thereto, an amount of cash equal to 105% (or such greater percentage as the L/C Issuer may require in the case of any Letter of Credit with an expiration date later than one year after the date of providing such cash collateral) of the amount of Letter of Credit Obligations as additional collateral security for Obligations in respect of any outstanding Letter of Credit. Agent may at any time apply any or all of such cash and cash collateral to the payment of any or all of the Credit Parties' Obligations in respect of any Letters of Credit. Pending such application, Agent may (but shall not be obligated to) invest the same in an interest bearing account in Agent's name, for the benefit of the L/C Issuer, Agent and the Lenders entitled thereto, under which deposits are available for immediate withdrawal, at such bank or financial institution as the L/C Issuer and Agent may, in their discretion, select.

ARTICLE IX

AGENT

9.1 Appointment and Duties.

(a) Appointment of Agent. Each Secured Party hereby appoints Capital One (together with any successor Agent pursuant to Section 9.9) as Agent hereunder and authorizes Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Credit Party, (ii) take such other actions on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto. Each Secured Party further consents to and authorizes Agent's execution and delivery of any intercreditor or subordination agreements from time to time as contemplated by the terms hereof on behalf of such Secured Party and agrees to be bound by the terms and provisions thereof, including any purchase option contained therein.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the Secured Parties), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders and the L/C Issuers with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in Sections 8.1(f) or 8.1(g) or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 8.1(f) or 8.1(g) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Person), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection

and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the other Secured Parties with respect to the Credit Parties and/or the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Secured Party to act as collateral sub-agent for Agent, the Secured Parties for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and Cash Equivalents held by, such Secured Party, and may further authorize and direct the Secured Parties to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Agent, and each Secured Party hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Loan Documents, Agent (i) is acting solely on behalf of the Secured Parties (except to the limited extent provided in Section 2.4(b) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Agent”, the terms “agent”, “Agent” and “collateral agent” and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (ii) is not assuming and shall not have any actual or implied obligations, functions, responsibilities, duties, under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Secured Party or any other Person, and each Secured Party, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) and (ii) above.

9.2 Binding Effect. Each Secured Party, by accepting the benefits of the Loan Documents, agrees that (i) any action taken (or omitted to be taken) by Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken (or omitted to be taken) by Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

9.3 Use of Discretion.

(a) No Action without Instructions. Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, the Required Revolving Lenders or a greater proportion of the Lenders).

(b) Right Not to Follow Certain Instructions. Notwithstanding clause (a) above, Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to Agent, any other Person) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against Agent or any Related Person

thereof or (ii) that is, in the opinion of Agent or its counsel, contrary to any Loan Document or applicable Requirement of Law.

(c) Exclusive Right to Enforce Rights and Remedies. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Agent in accordance with the Loan Documents for the benefit of all the Secured Parties; provided that the foregoing shall not prohibit (i) 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, (ii) each of the L/C Issuer and the Swing Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Lender, as the case may be) hereunder and under the other Loan Documents, (iii) any Lender from exercising setoff rights in accordance with Section 10.11 and this Section 9.3 or (iv) any Secured Party from filing proofs of claim (and thereafter appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any bankruptcy or other debtor relief law), but in the case of this clause (iv) if, and solely if, Agent has not filed such proof of claim or other instrument of similar character in respect of the Obligations under the Loan Documents within five (5) days before the expiration of the time to file the same.

9.4 Delegation of Rights and Duties. Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this Article IX to the extent provided by Agent.

9.5 Reliance and Liability. Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 10.9, (ii) rely on the Register to the extent set forth in Section 2.4, (iii) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Credit Party) and (iv) rely and act upon any document and information (including those transmitted by Electronic Transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(a) None of Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Secured Party, each Borrower and each other Credit Party hereby waive and shall not assert (and each of the Borrowers shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Agent and its Related Persons:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Agent, when acting on behalf of Agent);

(ii) shall not be responsible to any Secured Party or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of any Credit Party or any Related Person of any Credit Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Agent in connection with the Loan Documents;

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Credit Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower Representative or any Secured Party describing such Default or Event of Default clearly labeled "notice of default" (in which case Agent shall promptly give notice of such receipt to all Lenders);

(v) shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution;

(vi) shall not be responsible to any Secured Party, any Borrower, any Credit Party or any other Person, or have any liability for, any incorrect or inaccurate determination of LIBOR or the Base Rate for any purpose under any Loan Document; and

(vii) do not warrant, nor accept responsibility, nor have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBOR" or with respect to any comparable or successor rate thereto, including without limitation whether the composition or characteristics of any such alternative, successor or replacement reference rate, as it may or may not be adjusted pursuant to Section 11.6, will be similar to, or produce the same value or economic equivalence of, LIBOR or have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability.

and, for each of the items set forth in clauses (i) through (vii) above, each Secured Party and each Borrower hereby waives and agrees not to assert (and each Borrower shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action it might have against Agent based thereon.

9.6 Agent Individually. Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock of, engage in any kind of business with, any Credit Party or Affiliate thereof as though it

were not acting as Agent and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “**Lender**”, “**Revolving Lender**”, “**Required Lender**”, “**Required Revolving Lender**” and any similar terms shall, except where otherwise expressly provided in any Loan Document, include Agent or such Affiliate, as the case may be, in its individual capacity as Lender, Revolving Lender, one of the Required Lenders or one of the Required Revolving Lenders, respectively.

9.7 Lender Credit Decision. Each Secured Party acknowledges that it shall, independently and without reliance upon Agent, any other Secured Party or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Credit Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Agent to the Lenders or L/C Issuers, Agent shall not have any duty or responsibility to provide any Secured Party with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come in to the possession of Agent or any of its Related Persons.

9.8 Expenses; Indemnities; Withholding.

(a) Each Lender agrees to reimburse Agent and each of its Related Persons (to the extent not reimbursed by any Credit Party) promptly upon demand, severally and ratably, for any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Credit Party) that may be incurred by Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to, its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify Agent, each L/C Issuer and each of their respective Related Persons (to the extent not reimbursed by any Credit Party), severally and ratably, from and against Liabilities (including, to the extent not indemnified pursuant to Section 9.8(c), Taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against Agent, any L/C Issuer or any of their respective Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any Related Document, any Letter of Credit or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Agent, any L/C Issuer or any of their respective Related Persons under or with respect to any of the foregoing; provided, that with respect to any indemnification owed to any L/C Issuer or any of its Related Persons in connection with any Letter of Credit, only Revolving Lenders shall be required to indemnify, such indemnification to be made severally and ratably based on such Revolving Lender’s Commitment Percentage of the Aggregate Revolving Loan Commitment (determined as of the time the applicable indemnification is sought by such L/C Issuer or Related Person from the Revolving Lenders); provided, further,

that no Lender shall be liable to Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(c) To the extent required by any Requirement of Law, Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding Tax (including withholding Taxes imposed under Chapters 3 and 4 of Subtitle A of the Code). If the IRS or any other Governmental Authority asserts a claim that Agent did not properly withhold Tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding Tax with respect to a particular type of payment, or because such Lender failed to notify Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding Tax ineffective, failed to maintain a Participant Register or for any other reason), or Agent reasonably determines that it was required to withhold Taxes from a prior payment but failed to do so, such Lender shall promptly indemnify Agent fully for all amounts paid, directly or indirectly, by Agent as Tax or otherwise, including penalties and interest, and together with all expenses incurred by Agent, including legal expenses, allocated internal costs and out-of-pocket expenses. Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding Tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Agent is entitled to indemnification from such Lender under this Section 9.8(c).

9.9 Resignation of Agent or L/C Issuer.

(a) Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrower Representative, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective in accordance with the terms of this Section 9.9. If Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Agent. If, after 30 days after the date of the retiring Agent's notice of resignation, no successor Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent from among the Lenders. Each appointment under this clause (a) (other than an appointment by Agent) shall be subject to the prior consent of the Borrower Representative, which may not be unreasonably withheld but shall not be required during the continuance of an Event of Default.

(b) Effective immediately upon its resignation, (i) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of Agent until a successor Agent shall have accepted a valid appointment hereunder, (iii) the retiring Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Agent under the Loan Documents and (iv) subject to its rights under Section 9.3, the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

(c) Any L/C Issuer may resign at any time by delivering notice of such resignation to Agent, effective on the date set forth in such notice or, if no such date is set forth therein, on the date such notice shall be effective. Upon such resignation, the L/C Issuer shall remain an L/C Issuer and shall retain its rights and obligations in its capacity as such (other than any obligation to Issue Letters of Credit but including the right to receive fees or to have Lenders participate in any L/C Reimbursement Obligation thereof) with respect to Letters of Credit Issued by such L/C Issuer on or prior to the date of such resignation and shall otherwise be discharged from all other duties and obligations under the Loan Documents.

9.10 Release of Collateral or Guarantors. Each Secured Party hereby consents to the release and hereby directs Agent to release (or, in the case of clause (b)(ii) below, release or subordinate) the following:

(a) any Subsidiary of a Borrower from its guaranty of any Obligation if all of the Stock of such Subsidiary owned by any Credit Party are sold or transferred in a transaction permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to Section 5.13; and

(b) any Lien held by Agent for the benefit of the Secured Parties against (i) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Credit Party in a transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to Section 5.13 after giving effect to such transaction have been granted, (ii) any Property subject to a Lien permitted hereunder in reliance upon Section 6.1(h) or 6.1(i) and (iii) all of the Collateral and all Credit Parties, upon (A) the occurrence of the Facility Termination Date and (B) to the extent requested by Agent, receipt by Agent and the Secured Parties of liability releases from the Credit Parties each in form and substance reasonably acceptable to Agent.

(c) Each Secured Party hereby directs Agent, and Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower Representative, to execute and deliver or file such documents and to perform other actions reasonably necessary at the Borrowers' expense to release the guaranties and Liens when and as directed in this Section 9.10.

9.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender or L/C Issuer party hereto as long as, by accepting such benefits, such Secured Party agrees, as among Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by Agent, shall confirm such agreement in a writing in form and substance acceptable to Agent). Section 2.10, this Article IX, Section 10.3, Section 10.9, Section 10.10, Section 10.11, Section 10.15, Section 10.16, Section 10.17, Section 10.20, Section 10.23 and Section 11.1 (and, solely with respect to L/C Issuers, Section 2.1(c)), all terms and provisions contained herein applicable to Secured Swap Providers or Secured Cash Management Banks, as applicable, and the decisions and actions of Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) to the same extent a Lender is bound; provided, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 9.8 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (b) each of Agent, the Lenders and the L/C Issuers party hereto shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of

the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as otherwise set forth herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

9.12 Additional Titles. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Lead Arrangers, the Documentation Agent and Syndication Agent shall not have any duties or responsibilities, nor shall any of the Lead Arranger, the Documentation Agent and Syndication Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against any of the Lead Arranger, the Documentation Agent and Syndication Agent.

9.13 Credit Bid. Each of the Lenders hereby irrevocably authorizes (and by entering into a Secured Rate Contract or Secured Cash Management Agreement, each Secured Swap Provider or Secured Cash Management Bank, as the case may be, hereby authorizes and shall be deemed to authorize) Agent, on behalf of all Secured Parties to take any of the following actions upon the instruction of the Required Lenders:

- (a) consent to the Disposition of all or any portion of the Collateral free and clear of the Liens securing the Obligations in connection with any Disposition pursuant to the applicable provisions of the Bankruptcy Code, including Section 363 thereof;
- (b) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the Bankruptcy Code, including under Section 363 thereof;
- (c) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC;
- (d) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any foreclosure or other Disposition conducted in accordance with applicable law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise; and/or
- (e) estimate the amount of any contingent or unliquidated Obligations of such Lender or other Secured Party;

it being understood that no Lender shall be required to fund any amount (other than by means of offset) in connection with any purchase of all or any portion of the Collateral by Agent pursuant to the foregoing clauses (b), (c) or (d) without its prior written consent.

Each Secured Party agrees that Agent is under no obligation to credit bid any part of the Obligations or to purchase or retain or acquire any portion of the Collateral; *provided* that, in connection with any credit bid or purchase described under clauses (b), (c) or (d) of the preceding paragraph, the Obligations owed to all of the Secured Parties (other than with respect to contingent or unliquidated liabilities as set forth in the next succeeding paragraph) may be, and shall be, credit bid by Agent on a ratable basis.

With respect to each contingent or unliquidated claim that is an Obligation, Agent is hereby authorized, but is not required, to estimate the amount thereof for purposes of any credit bid or purchase described in the second preceding paragraph so long as the estimation of the amount or liquidation of such claim would not unduly delay the ability of Agent to credit bid the Obligations or purchase the Collateral in the relevant Disposition. In the event that Agent, in its sole and absolute discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of Agent to consummate any credit bid or purchase in accordance with the second preceding paragraph, then any contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

Each Secured Party whose Obligations are credit bid under clauses (b), (c) or (d) of the third preceding paragraph shall be entitled to receive interests in the Collateral or any other asset acquired in connection with such credit bid (or in the Stock of the acquisition vehicle or vehicles that are used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (x) the amount of the Obligations of such Secured Party that were credit bid in such credit bid or other Disposition, by (y) the aggregate amount of all Obligations that were credit bid in such credit bid or other Disposition.

9.14 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of the Borrowers, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, or participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into,

participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;
or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of the Borrowers, that the Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

ARTICLE X

MISCELLANEOUS

10.1 Amendments and Waivers.

(a) Amendments Generally. Subject to the provisions of Section 10.1(e), (f) and (g) hereof, no amendment or waiver of, or supplement or other modification (which shall include any direction to Agent pursuant to, any Loan Document (other than the Fee Letters, any Control Agreement, any Mortgage, or any letter of credit reimbursement or similar agreement or any landlord, bailee or mortgagee agreement) or any provision thereof, and no consent with respect to any departure by any Credit Party from any such Loan Documents, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent with the consent of the Required Lenders), and the Borrower Representative and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, supplement (including any additional Loan Document), or other modification, or consent shall, unless in writing and signed by all the Lenders directly and adversely affected thereby (or by Agent with the consent of all the Lenders directly and adversely affected thereby), in addition to the Required Lenders (or by Agent with the consent of the Required Lenders) and the Borrowers, do any of the following:

(i) increase or extend the Commitment of such Lender (or reinstate any Commitment terminated pursuant to Section 8.2(a));

(ii) postpone or delay any date fixed for, or reduce or waive, any scheduled installment of principal or any payment of interest, fees or other amounts (other than principal) due to the Lenders (or any of them) or L/C Issuer hereunder or under any other Loan Document (for the avoidance of doubt, mandatory prepayments pursuant to Section 2.8 (other than scheduled installments under Section 2.8(a)) may be postponed, delayed, reduced, waived or modified with the consent of the Required Lenders);

(iii) reduce the principal of, or the rate of interest specified herein (it being agreed that waiver of the default interest margin shall only require the consent of Required Lenders) or the amount of interest payable in cash specified herein on any Loan, or of any

fees or other amounts payable hereunder or under any other Loan Document, including L/C Reimbursement Obligations;

(iv) (A) change or have the effect of changing the priority or pro rata treatment of any payments (including voluntary and mandatory prepayments), Liens, proceeds of Collateral or reductions in Commitments (including as a result in whole or in part of allowing the issuance or incurrence, pursuant to this Agreement or otherwise, of new loans or other Indebtedness having any priority over any of the Obligations in respect of payments, Liens, Collateral or proceeds of Collateral, in exchange for any Obligations or otherwise), or (B) advance the date fixed for, or increase, any scheduled installment of principal due to any of the Lenders under any Loan Document;

(v) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans which shall be required for the Lenders or any of them to take any action hereunder;

(vi) amend this Section 10.1 (other than Section 10.1(c)) or, subject to the terms of this Agreement, the definition of Required Lenders, the definition of Required Revolving Lenders or any provision providing for consent or other action by all Lenders; or

(vii) discharge any Credit Party from its respective payment Obligations under the Loan Documents, or release all or substantially all of the Collateral, except as otherwise may be provided in this Agreement or the other Loan Documents;

it being agreed that (X) all Lenders shall be deemed to be directly and adversely affected by an amendment, waiver, supplement or other modification described in the preceding clauses (iv)(B), (v), (vi) or (vii) and (Y) notwithstanding the preceding clause (X), only those Lenders that have not been provided a reasonable opportunity, as determined in the good faith judgment of Agent, to receive the most-favorable treatment under or in connection with the applicable amendment, waiver or supplement described in the preceding clause (iv) (other than the right to receive customary administrative agency, arranging, underwriting and other similar fees) that is provided to any other Person, including the opportunity to participate on a pro rata basis on the same terms in any new loans or other Indebtedness permitted to be issued as a result of such amendment, waiver or supplement, shall be deemed to be directly and adversely affected by such amendment, waiver or supplement.

(b) Agent, Swing Lender and L/C Issuer. No amendment, waiver or consent shall, unless in writing and signed by Agent, the Swing Lender or the L/C Issuer, as the case may be, in addition to the Required Lenders or all Lenders directly affected thereby, as the case may be (or by Agent with the consent of the Required Lenders or all the Lenders directly affected thereby, as the case may be), affect the rights or duties of Agent, the Swing Lender or the L/C Issuer, as applicable, under this Agreement or any other Loan Document. No amendment, modification or waiver of this Agreement or any Loan Document altering the ratable treatment of Secured Rate Contract Obligations or Secured Cash Management Obligations resulting in such Secured Rate Contract Obligations or Secured Cash Management Obligations being junior in right of payment to principal on the Loans or resulting in such Secured Rate Contract Obligations or Secured Cash Management Obligations becoming unsecured (other than releases of Liens applicable to all Lenders permitted in accordance with the terms hereof), in each case in a manner adverse to any Secured Swap Provider or any Secured Cash Management Bank, shall be effective without the written consent of such Secured Swap Provider or such Secured Cash Management Bank, as the case may be.

(c) Required Revolving Lenders. No amendment or waiver shall, unless signed by Required Revolving Lenders (or by Agent with the consent of the Required Revolving Lenders) in addition to the Required Lenders (or by Agent with the consent of the Required Lenders) and the Borrower Representative: (i) amend or waive compliance with the conditions precedent to the obligations of Lenders to make any Revolving Loan (or of any L/C Issuer to Issue any Letter of Credit) in Section 3.2; or (ii) waive any Default or Event of Default for the purpose of satisfying the conditions precedent to the obligations of Lenders to make any Revolving Loan (or of any L/C Issuer to Issue any Letter of Credit) in Section 3.2. No amendment shall: (x) amend or waive this Section 10.1(c) or the definitions of the terms used in this Section 10.1(c) insofar as the definitions affect the substance of this Section 10.1(c); (y) change the definition of the term Required Revolving Lenders; or (z) change the percentage of Lenders which shall be required for Revolving Lenders to take any action hereunder, in each case, without the consent of all Revolving Lenders.

(d) Additional Credit Facilities. This Agreement may be amended with the written consent of Agent, the Borrower Representative and the Required Lenders to (i) add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the outstanding principal and accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and Revolving Loans and the accrued interest and fees in respect thereof and (ii) include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(e) Schedules; Corrections; Liens; Incrementals. Notwithstanding anything to the contrary contained in this Section 10.1, (i) the Borrower Representative may amend Schedules 4.19 and 4.20 upon notice to Agent, (ii) Agent may amend Schedules 2.1(a) and 2.1(b) to reflect Incremental Facilities and Sales entered into pursuant to Section 10.9, (iii) Agent and the Borrower Representative may amend or modify this Agreement and any other Loan Document to (1) cure any ambiguity, omission, defect or inconsistency therein, (2) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional Property for the benefit of the Secured Parties or join additional Persons as Credit Parties, and (3) add one or more Incremental Facilities to this Agreement pursuant to Section 2.1(e) and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the Revolving Loans and the accrued interest and fees in respect thereof and to include appropriately the Lenders holding such credit facilities in any determination of the Required Revolving Lenders and Required Lenders; and (iv) in connection with an amendment in which any Class of Term Loans or Class of Revolving Loan Commitments (or outstandings thereunder) is refinanced with a replacement Class of Term Loans or Revolving Loan Commitments (or outstandings thereunder), as applicable, bearing (or is modified in such a manner such that the resulting Term Loans or Revolving Loan Commitments (or outstandings thereunder) bear) a lower All-In Yield and other customary amendments related thereto (a “**Permitted Repricing Amendment**”), only the consent of each of the Lenders holding the Term Loans or Revolving Loan Commitments (or outstandings thereunder) subject to such permitted repricing transaction that will continue as a Lender in respect of the modified Term Loans or Revolving Loan Commitments (or outstandings thereunder) shall be required for such Permitted Repricing Amendment.

(f) Extensions. Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “**Extension Offer**”) made from time to time by the Borrower Representative to all Lenders holding Term Loans with a like maturity date or all

Revolving Lenders having Revolving Loan Commitments with a like commitment termination date, in each case on a pro rata basis (based on the aggregate outstanding principal amount of such respective Term Loans or amounts of Revolving Loan Commitments) and on the same terms to each such Lender, the Borrowers are hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in any such Extension Offers to extend the maturity date and/or commitment termination of each such Lender's Term Loans and/or Revolving Loan Commitments, and, subject to the terms hereof, otherwise modify the terms of such Term Loans and/or Revolving Loan Commitments pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate and/or fees payable in respect of such Term Loans and/or Revolving Loan Commitments (and related outstandings) and/or modifying the amortization schedule in respect of such Lender's Term Loans) (each, an "**Extension**"; and each group of Term Loans or Revolving Loan Commitments, as applicable, in each case as so extended, as well as the original Term Loans and the original Revolving Loan Commitments (in each case not so extended), being a separate Class), so long as the following terms are satisfied:

(i) no Default or Event of Default shall have occurred and be continuing at the time the applicable Extension Offer is delivered to the Lenders;

(ii) except as to final commitment termination date (which shall be determined by the Borrowers and set forth in the relevant Extension Offer, subject to acceptance by the Extended Revolving Lenders), the Revolving Loan Commitment of any Revolving Lender that agrees to an Extension with respect to such Revolving Loan Commitment (an "**Extended Revolving Lender**") extended pursuant to an Extension (an "**Extended Revolving Loan Commitment**" and the Loans thereunder, "**Extended Revolving Loans**") and the related outstandings shall be a Revolving Loan Commitment (or related outstandings, as the case may be) with the same terms (or terms not less favorable to existing Revolving Lenders) as the original Revolving Loan Commitments (and related outstandings); provided that (1) the borrowing and payments (except for (A) payments of interest and/or fees at different rates on Extended Revolving Loan Commitments (and related outstandings), (B) repayments required upon the commitment termination date of the non-extended Class of Revolving Loan Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments) of Revolving Loans with respect to Extended Revolving Loan Commitments after the applicable Extension date shall be made on a pro rata basis with all other Revolving Loan Commitments, (2) subject to Section 10.1(b), all Swing Loans and Letters of Credit shall be participated on a pro rata basis by all Lenders with Revolving Loan Commitments (including Extended Revolving Loan Commitments) in accordance with their percentage of the Aggregate Revolving Loan Commitments, (3) the permanent repayment of Revolving Loans with respect to, and termination of, Extended Revolving Loan Commitments after the applicable Extension date shall be made on a pro rata basis with all other Revolving Loan Commitments, except that the Borrowers shall be permitted to repay permanently and terminate commitments of any such Class on a better than pro rata basis as compared to any other Class with a later commitment termination date than such Class, (4) assignments and participations of Extended Revolving Loan Commitments and related Revolving Loans shall be governed by the same assignment and participation provisions applicable to the other Classes of Revolving Loan Commitments and Revolving Loans and (5) at no time shall there be Revolving Loan Commitments hereunder (including Extended Revolving Loan Commitments and any original Revolving Loan Commitments) which have more than two (2) different maturity dates;

(iii) except as to interest rates, fees, amortization, final maturity date, premium, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iv), (v) and (vi), be determined by the Borrowers and set forth in the relevant Extension Offer, subject to acceptance by the Extending Term Lenders), the Term Loans of any Term Lender that agrees to an Extension (such commitment, an “**Extended Term Loan Commitment**”) with respect to such Term Loans owed to it (an “**Extending Term Lender**”) extended pursuant to any Extension (“**Extended Term Loans**”) shall have the same terms as the Class of Term Loans subject to such Extension Offer (except for covenants or other provisions contained therein applicable only to periods after the then Latest Maturity Date);

(iv) the final maturity date of any Extended Term Loans shall be no earlier than the Latest Maturity Date of the Term Loans extended thereby and the amortization schedule applicable to Loans pursuant to Section 2.8(a) for periods prior to the original maturity date of the Term Loans shall not be increased;

(v) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the Weighted Average Life to Maturity of the Term Loans extended thereby;

(vi) any Extended Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than pro rata basis) with non-extended Classes of Term Loans in any voluntary or mandatory prepayments hereunder, in each case as specified in the respective Extension Offer; and

(vii) if the aggregate principal amount of Term Loans (calculated on the outstanding principal amount thereof) and/or Revolving Loan Commitments, as the case may be, in respect of which Term Lenders or Revolving Lenders, as applicable, shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans or Revolving Loan Commitments, as the case may be, offered to be extended by the Borrower Representative pursuant to such Extension Offer, then the Term Loans and/or Revolving Loans of such Term Lenders or Revolving Lenders, as applicable, shall be extended ratably up to such maximum amount based on the respective principal or commitment amounts with respect to which such Term Lenders and/or Revolving Lenders, as the case may be, have accepted such Extension Offer.

With respect to all Extensions consummated by the Borrowers pursuant to this Section, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Sections 2.7 or 2.8 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment; provided that the Borrower Representative may at its election specify as a condition to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower Representative’s sole discretion and may be waived by the Borrower Representative) of Term Loans or Revolving Loan Commitments (as applicable) of any or all applicable Classes be tendered. Agent and the Lenders hereby consent to the transactions contemplated by this Section (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans and/or Extended Revolving Loan Commitments on the such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit or conflict with any such Extension or any other transaction contemplated by this Section. Any Lender that does not respond to an Extension Offer by the applicable due date shall be deemed to have rejected such Extension Offer.

No consent of Agent or any Lender shall be required to effectuate any Extension, other than (A) the consent of each Lender agreeing to such Extension with respect to one or more of its Term Loans and/or Revolving Loan Commitments (or a portion thereof) and (B) with respect to any Extension of the Revolving Loan Commitments, the consent of the L/C Issuer and Swing Lender. All Extended Term Loans, Extended Revolving Loan Commitments and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents and secured by the Collateral on a pari passu basis with all other applicable Obligations. The Lenders hereby irrevocably authorize Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower Representative (on behalf of all Credit Parties) as may be necessary in order to establish new Classes or sub-Classes in respect of Revolving Loan Commitments or Term Loans so extended and such technical amendments as may be necessary in the reasonable opinion of Agent and the Borrower Representative in connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section. In addition, if so provided in such amendment and with the consent of each L/C Issuer, participations in Letters of Credit expiring on or after the applicable commitment termination date shall be re-allocated from Lenders holding non-extended Revolving Loan Commitments to Lenders holding Extended Revolving Loan Commitments in accordance with the terms of such amendment; provided, however, that such participation interests shall, upon receipt thereof by the relevant Lenders holding Revolving Loan Commitments, be deemed to be participation interests in respect of such Revolving Loan Commitments and the terms of such participation interests shall be adjusted accordingly. Without limiting the foregoing, in connection with any Extensions the applicable Credit Parties shall (at their expense) amend (and Agent is hereby directed by the Lenders to amend) any Mortgage that has a maturity date prior to the Latest Maturity Date, so that such maturity date referenced therein is extended to the later of the then Latest Maturity Date (or such later date as may be advised by local counsel to Agent). Agent shall promptly notify each Lender of the effectiveness of each such amendment.

In connection with any Extension, the Borrower Representative shall provide Agent at least five (5) Business Days (or such shorter period as may be agreed by Agent) prior written notice thereof, and shall agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, Agent, in each case acting reasonably to accomplish the purposes of this Section 10.1(f).

This Section 10.1(f) shall supersede any provisions of this Section 10.1 or Section 10.11 to the contrary.

(g) Certain other Loan Documents. Any Fee Letter, any Control Agreement, any Mortgage, any letter of credit reimbursement or similar agreement or any landlord, bailee or mortgagee agreement may be amended as provided therein and if not provided therein, by each of the parties thereto.

10.2 Notices.

(a) Addresses. All notices and other communications required or expressly authorized to be made by this Agreement shall be given in writing, unless otherwise expressly specified herein, and (i) addressed to the address set forth on the applicable signature page hereto, (ii) posted to Syndtrak® (to the extent such system is available and set up by or at the direction of Agent prior to posting) in an appropriate location by uploading such notice, demand, request, direction or other communication to www.syndtrak.com or using such other means of posting to Syndtrak® as may be available and reasonably acceptable to Agent prior to such

posting, (iii) posted to any other E-System approved by or set up by or at the direction of Agent or (iv) addressed to such other address as shall be notified in writing (A) in the case of the Borrowers, Agent and the Swing Lender, to the other parties hereto and (B) in the case of all other parties, to the Borrower Representative and Agent. Transmissions made by electronic mail or E-Fax to Agent shall be effective only (x) for notices where such transmission is specifically authorized by this Agreement, (y) if such transmission is delivered in compliance with procedures of Agent applicable at the time and previously communicated to the Borrower Representative, and (z) if receipt of such transmission is acknowledged by Agent.

(b) Effectiveness.

(i) All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one (1) Business Day after delivery to such courier service, (iii) if delivered by mail, three (3) Business Days after deposit in the mail, (iv) if delivered by facsimile (other than to post to an E-System pursuant to clause (a)(ii) or (a)(iii) above), upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E-System, on the later of the Business Day of such posting and the Business Day access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E-System; provided, however, that no communications to Agent pursuant to Article I shall be effective until received by Agent.

(ii) The posting, completion and/or submission by any Credit Party of any communication pursuant to an E-System shall constitute a representation and warranty by the Credit Parties that any representation, warranty, certification or other similar statement required by the Loan Documents to be provided, given or made by a Credit Party in connection with any such communication is true, correct and complete except as expressly noted in such communication or E-System.

(c) Each Lender shall notify Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of its Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as Agent shall reasonably request.

10.3 Electronic Transmissions.

(a) Authorization. Subject to the provisions of Section 10.2(a), each of Agent, Lenders, each Credit Party and each of their Related Persons, is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. Each Credit Party and each Secured Party hereto acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) Signatures. Subject to the provisions of Section 10.2(a), (i)(A) no posting to any E-System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a "signature" and (C) each such posting shall be deemed sufficient to satisfy any requirement for a

“writing”, in each case including pursuant to any Loan Document, any applicable provision of any UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which Agent, each other Secured Party and each Credit Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Requirement of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such party’s or beneficiary’s right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(c) Separate Agreements. All uses of an E-System shall be governed by and subject to, in addition to Section 10.2 and this Section 10.3, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related Contractual Obligations executed by Agent and Credit Parties in connection with the use of such E-System.

(d) LIMITATION OF LIABILITY. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED “AS IS” AND “AS AVAILABLE”. NONE OF AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS WARRANTS THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY E-SYSTEMS OR ELECTRONIC TRANSMISSION AND DISCLAIMS ALL LIABILITY FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-SYSTEMS OR ELECTRONIC COMMUNICATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS. Each of the Borrowers, the other Credit Parties executing this Agreement and the Secured Parties agrees that Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

10.4 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No course of dealing between any Credit Party, any Affiliate of any Credit Party, Agent or any Lender shall be effective to amend, modify or discharge any provision of this Agreement or any of the other Loan Documents.

10.5 Costs and Expenses. Any action taken by any Credit Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of Agent or Required Lenders, shall be at the expense of such Credit Party, and neither Agent nor any other Secured Party shall be required under any Loan Document to reimburse any Credit Party or any Subsidiary of any Credit Party therefor except as expressly provided therein. In addition, the Borrowers agree to pay or reimburse upon demand (a) Agent for all reasonable, customary and documented out-of-pocket costs and expenses incurred by it or any of its Related Persons, in connection with the investigation, development, preparation, negotiation, syndication, execution, interpretation or administration of, any modification of any term of or termination

of, any Loan Document, any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein, in each case including Attorney Costs of Agent (including in-house legal counsel), the cost of Environmental Assessments, environmental audits or other environmental investigations (e.g., monitoring), syndication, distribution, Collateral audits and appraisals, background checks and similar expenses, to the extent permitted hereunder, (b) Agent for all reasonable costs and expenses incurred by it or any of its Related Persons in connection with internal audit reviews, field examinations and Collateral examinations (which shall be reimbursed, in addition to the out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by Agent for its examiners), (c) each of Agent, its Related Persons, and L/C Issuer for all costs and expenses incurred in connection with (i) the creation, perfection and maintenance of the perfection of Agent's Liens upon the Collateral, including Lien search, filing and recording fees, (ii) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" in any insolvency or bankruptcy proceeding or otherwise and whether or not consummated, (iii) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or any attempt to inspect, verify, protect, insure, collect, sell, liquidate or otherwise dispose of any Collateral or (iv) the commencement, defense, conduct of, intervention in, or the taking of any other action (including preparation for and/or response to any subpoena or request for document production relating thereto) with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Credit Party, any Subsidiary of any Credit Party, Loan Document or Obligation, including Attorney Costs, (d) the cost of purchasing insurance that the Credit Parties fail to obtain as required by the Loan Documents and (e) fees and disbursements of Attorney Costs on behalf of all Lenders (other than Agent) incurred in connection with any of the matters referred to in clause (c) above.

10.6 Indemnity.

(a) Each Credit Party agrees to indemnify, hold harmless and defend Agent, each Lender, each L/C Issuer and each of their respective Related Persons (each such Person being an "**Indemnitee**") from and against all Liabilities (including Attorney Costs, brokerage commissions, fees and other compensation) that may be imposed on, incurred by or asserted against any such Indemnitee (whether brought by a Credit Party, an Affiliate of a Credit Party or any other Person) in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, any Obligation (or the repayment thereof), any Letter of Credit, the use or intended use of the proceeds of any Loan or the use of any Letter of Credit or any securities filing of, or with respect to, any Credit Party, (ii) any commitment letter, proposal letter or term sheet with any Person or any Contractual Obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Target, any Credit Party or any Affiliate of any of them in connection with any of the foregoing and any Contractual Obligation entered into in connection with any E-Systems or other Electronic Transmissions, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of securities or creditors (and including Attorney Costs in any case; provided, that such Indemnitee shall consult with the Borrower Representative with respect to the choice of counsel engaged for any Indemnified Matter (as defined below) hereunder, but for the avoidance of doubt, the Borrower Representative shall have no consent or veto right over such choice of counsel), whether or not any such Indemnitee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise or (iv) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the "**Indemnified Matters**"); provided, however, that no Credit Party shall have any liability under this Section 10.6 to any Indemnitee with respect to any

Indemnified Matter, and no Indemnitee shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), (a) to the extent such liability (y) has resulted primarily from the gross negligence or willful misconduct of such Indemnitee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order or (z) has arisen out of, or in connection with, any claim, litigation, investigation or proceeding that does not involve an act or omission by any Credit Party, any Subsidiary of any Credit Party or any Affiliate of such Credit Party or such Subsidiary and that is brought by such Indemnitee against any other Indemnitee (other than an Indemnitee acting in its capacity as an agent, arranger, bookrunner, lender or any other similar role in connection with any Indemnified Matters) or (b) such Indemnitee is in material breach of its duties hereafter. Furthermore, each Credit Party executing this Agreement waives and agrees not to assert against any Indemnitee, and shall cause each other Credit Party to waive and not assert against any Indemnitee, any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person. This Section 10.6(a) shall not apply with respect to Taxes other than any Taxes that represent Liabilities arising from any non-Tax claim.

(b) Without limiting the foregoing, “**Indemnified Matters**” includes all Environmental Liabilities imposed on, incurred by or asserted against any Indemnitee, including those arising from, or otherwise involving, any Property of any Credit Party or any Related Person of any Credit Party or any actual, alleged or prospective damage to Property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such Property or natural resource or any Property on or contiguous to any Real Estate of any Credit Party or any Related Person of any Credit Party, whether or not, with respect to any such Environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor-in-interest to any Credit Party or any Related Person of any Credit Party or the owner, lessee or operator of any Property of any Related Person through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) are incurred solely following foreclosure by Agent or following Agent or any Lender having become the successor-in-interest to any Credit Party or any Related Person of any Credit Party and (ii) are attributable solely to acts of such Indemnitee.

10.7 Marshaling; Payments Set Aside. No Secured Party shall be under any obligation to marshal any Property in favor of any Credit Party or any other Person or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from a Borrower, from any other Credit Party, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

10.8 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that any assignment by any Lender shall be subject to the provisions of Section 10.9, and provided further that no Borrower may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Agent and each Lender.

10.9 Binding Effect; Assignments and Participations.

(a) Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrowers, the other Credit Parties signatory hereto and Agent and when Agent shall have been notified by each Lender that such Lender has executed it. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of, the Borrowers, the other

Credit Parties hereto (in each case except for Article VIII), Agent, each Lender and each L/C Issuer receiving the benefits of the Loan Documents and, to the extent provided in Section 9.11, each other Secured Party and, in each case, their respective successors and permitted assigns. Except as expressly provided in any Loan Document (including in Section 9.9), none of any Borrower, any other Credit Party, any L/C Issuer or Agent shall have the right to assign any rights or obligations hereunder or any interest herein.

(b) Right to Assign. Each Lender may sell, transfer, negotiate or assign (a “Sale”) all or a portion of its rights and obligations hereunder (including all or a portion of its Commitments and its rights and obligations with respect to Loans and Letters of Credit) to:

- (i) any existing Lender (other than a Defaulting Lender);
- (ii) any Affiliate or Approved Fund of any existing Lender (other than a natural Person or a Defaulting Lender);
- (iii) reserved; or

(iv) any other Person (other than a natural Person, a Defaulting Lender or any Borrower or any of any Borrower’s Affiliates or Subsidiaries) who is an “accredited investor” (as defined in Regulation D of the Securities Act of 1933) acceptable (which acceptances shall not be unreasonably withheld or delayed) to (x) Agent, (y) as long as no Default or Event of Default under Section 8.1(a), Section 8.1(f) or Section 8.1(g) is continuing, the Borrower Representative, and (z) in the case of any Sale of a Revolving Loan, Letter of Credit or Revolving Loan Commitment, each L/C Issuer that is a Lender; provided that the acceptances of L/C Issuer and the Borrower Representative shall be deemed to have been given unless an objection is delivered to Agent within five (5) Business Days after notice of a proposed Sale is delivered to the L/C Issuer and the Borrower Representative, as applicable. Notwithstanding any provision herein to the contrary:

(A) such Sales do not have to be ratable between the Revolving Loan and Term Loans or between each Term Loan but must be ratable among the obligations owing to and owed by such Lender with respect to the Revolving Loans or a Term Loan;

(B) for each Loan, the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment) of the Loans, Commitments and Letter of Credit Obligations subject to any such Sale shall be in a minimum amount of \$1,000,000, unless such Sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor’s (together with its Affiliates and Approved Funds) entire interest in such facility or is made with the prior consent of the Borrower Representative (to the extent the Borrower Representative’s consent is otherwise required) and Agent;

(C) interest accrued, other than any interest that is payable-in-kind, prior to and through the date of any such Sale may not be assigned;

(D) such Sales by Lenders who are Defaulting Lenders due to clause (a) of the definition of Defaulting Lender shall be subject to Agent’s prior written consent in all instances, unless in connection with such sale, such Defaulting Lender cures, or causes the cure of, its Defaulting Lender status as contemplated in Section 2.11(e)(v); and

(E) assignments and participations to Disqualified Institutions shall be subject to the terms and conditions in Section 10.9(i).

Agent's refusal to accept a Sale to a Credit Party, a Subsidiary of a Credit Party or a Person that would be a Defaulting Lender, or the imposition of conditions or limitations (including limitations on voting) upon Sales to such Persons, shall not be deemed to be unreasonable. In the event of any purported assignment or transfer by a Lender of its rights or obligations under this Agreement and the other Loan Documents to any Affiliate of a Borrower (other than any of its Subsidiaries) that does not comply with the terms hereof, the Borrowers shall, within ten (10) Business Days cause the applicable Affiliate to contribute such Term Loans to the common equity of the Borrowers (which such Term Loans and all rights and obligations as a Term Lender related thereto, immediately and automatically, without any further action on the part of any Borrower, any Lender, Agent or any other Person, upon such contribution shall, for all purposes under this Agreement, the other Loan Documents and otherwise, be deemed to be irrevocably prepaid, terminated, extinguished, cancelled and of no further force and effect and the Borrowers shall neither obtain nor have any rights as a Lender hereunder or under the other Loan Documents by virtue of such assignment). Any Loan acquired by the Borrower Representative or any Subsidiary thereof shall immediately upon such acquisition be deemed to be irrevocably prepaid, terminated, extinguished, cancelled and of no further force and effect. Any purported assignment or transfer by a Lender of its rights or obligations under this Agreement and the other Loan Documents to any Person not Affiliated with the Borrowers that does not comply with the terms hereof shall be treated for purposes of this Agreement as a sale by such Lender of a participation of such rights and obligations in accordance with Section 10.9(f) (subject to Section 10.9(i) in the case of a purported transfer to a Disqualified Institution), provided that such treatment shall not relieve any assigning Lender from any Liabilities arising as a consequence of its breach of this Agreement.

(c) Procedure. The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) or (f) below) shall execute and deliver to Agent an Assignment via an electronic settlement system designated by Agent (or, if previously agreed with Agent, via a manual execution and delivery of the Assignment) evidencing such Sale, together with any existing Note subject to such Sale (or any affidavit of loss therefor acceptable to Agent), any Tax forms required to be delivered pursuant to Section 11.1 and payment of an assignment fee in the amount of \$3,500 to Agent, unless waived or reduced by Agent; provided that (i) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (ii) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of \$3,500 shall be due in connection with such Sale (unless waived or reduced by Agent). Upon receipt of all the foregoing, and conditioned upon such receipt and, if such Assignment is made in accordance with clause (iv) of Section 10.9(b), upon Agent (and, if applicable, the Borrower Representative and L/C Issuer) consenting to such Assignment, from and after the effective date specified in such Assignment, Agent shall record or cause to be recorded in the Register the information contained in such Assignment.

(d) Effectiveness. Subject to the recording of an Assignment by Agent in the Register pursuant to Section 2.4(b), (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment, shall have the rights and obligations of a Lender, (ii) any

applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment, relinquish its rights (except for those surviving the termination of the Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).

(e) Grant of Security Interests. In addition to the other rights provided in this Section 10.9, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), without notice to Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender's Indebtedness or equity securities, by notice to Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with clause (b) above), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

(f) Participants and SPVs. In addition to the other rights provided in this Section 10.9, each Lender may, (x) with notice to Agent, grant to an SPV the option to make all or any part of any Loan that such Lender would otherwise be required to make hereunder (and the exercise of such option by such SPV and the making of Loans pursuant thereto shall satisfy the obligation of such Lender to make such Loans hereunder) and such SPV may assign to such Lender the right to receive payment with respect to any Obligation and (y) without notice to or consent from Agent or the Borrowers, sell participations to one or more Persons (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrowers or any of the Borrowers' Affiliates or Subsidiaries) in or to all or a portion of its rights and obligations under the Loan Documents (including all its rights and obligations with respect to the Term Loans, Revolving Loans and Letters of Credit); provided, however, that, whether as a result of any term of any Loan Document or of such grant or participation, (i) no such SPV or participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Credit Parties and the Secured Parties towards such Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations in the Register, except that (A) each such participant and SPV shall be entitled to the benefit of Article XI, but, with respect to Section 11.1, only to the extent such participant or SPV delivers the Tax forms such Lender is required to collect pursuant to Section 11.1(g) and then only to the extent of any amount to which such Lender would be entitled in the absence of any such grant or participation except to the extent such entitlement to receive a greater amount results from any change in, or in the interpretation of, any Requirement of Law that occurs after the date such grant or participation is made (and in consideration of the foregoing, each such Participant and SPV shall be deemed to have acknowledged and agreed to be bound by the provisions of Section 10.20) and (B) each such SPV may receive other payments that would otherwise be made to such Lender with respect to Loans funded by such SPV to the extent provided in the applicable option agreement and set forth in a notice provided to Agent by such SPV and such Lender, provided, however, that in no case (including pursuant to clause (A) or (B) above) shall an SPV or participant have

the right to enforce any of the terms of any Loan Document, and (iii) the consent of such SPV or participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (ii) and (iii) of Section 10.1(a) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPV would otherwise be entitled and, in the case of participants, except for those described in clause (vii) of Section 10.1(a). No party hereto shall institute (and each Borrower shall cause each other Credit Party not to institute) against any SPV grantee of an option pursuant to this clause (f) any bankruptcy, reorganization, insolvency, liquidation or similar proceeding, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper of such SPV; provided, however, that each Lender having designated an SPV as such agrees to indemnify each Indemnitee against any Liability that may be incurred by, or asserted against, such Indemnitee as a result of failing to institute such proceeding (including a failure to be reimbursed by such SPV for any such Liability). The agreement in the preceding sentence shall survive the termination of the Commitments and the payment in full of the Obligations. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person other than Agent except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent shall have no responsibility for maintaining a Participant Register.

(g) reserved;

(h) reserved;

(i) Disqualified Institutions.

(i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "**Trade Date**") on which the assigning or transferring Lender entered into a binding agreement to sell and assign, or grant a participation in, all or a portion of its rights and obligations under this Agreement, as applicable, to such Person unless Agent and the Borrower Representative (unless a Default or Event of Default under Section 8.1(a), Section 8.1(f) or Section 8.1(g) has occurred and is continuing, in which case no consent from the Borrower Representative is required) have consented in writing in their sole and absolute discretion to such assignment or participation, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation. For the avoidance of doubt, (x) no assignment or participation shall be retroactively invalidated pursuant to this Section 10.9(i) if the Trade Date therefor occurred prior to the assignee's or participant's becoming a Disqualified Institution (including as a result of the delivery of a notice pursuant to, and/or

the expiration of the notice period referred to in, the definition of “Disqualified Institution”), and (y) the execution by the Borrower Representative or Agent of an Assignment with respect to such an assignment will not by itself result in such assignee no longer being considered a Disqualified Institution.

(ii) Agent and each assignor of a Loan or seller of a participation hereunder shall be entitled to rely conclusively on a representation of the assignee Lender or Participant in the relevant Assignment or participation agreement, as applicable, that such assignee or purchaser is not a Disqualified Institution. The Agent shall have the right, and the Borrowers hereby expressly authorize Agent, to (A) post the list of Disqualified Institutions provided by the Borrower Representative and any updates thereto from time to time (collectively, the “**DQ List**”) on an E-System, including that portion of such E-System that is designated for “public side” Lenders and/or (B) provide the DQ List to each Lender requesting the same. Any assignment to a Disqualified Institution or grant or sale of participation to a Disqualified Institution in violation of this Section 10.9(i) shall not be void, but the other provisions of this Section 10.9(i) shall apply.

(iii) If any assignment or participation is made to any Disqualified Institution without the consents required by this Section 10.9(i) and/or Section 10.9(b), or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower Representative may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and Agent, (1) terminate the Revolving Loan Commitment of such Disqualified Institution and pay or cause to be paid all Obligations of the Borrowers owing to such Disqualified Institution in connection with such Revolving Loan Commitment, (2) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay (or cause to be purchased or prepaid) such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions and conditions contained in this Section 10.9), all of its interest, rights and obligations under this Agreement and the other Loan Documents to one or more assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations of such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder. Any Term Loan so purchased by a Borrower under this Section 10.9(i) shall upon such purchase be deemed to be irrevocably prepaid, terminated, extinguished, cancelled and of no further force and effect.

(iv) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (1) will not have the right to (x) receive information, reports or other materials provided to Agent or Lenders by the Borrowers, Agent or any other Lender, (y) attend or participate (including by telephone) in meetings attended by any of the Lenders and/or Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of Agent or the Lenders and (2) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization pursuant to Section 1126 of

the Bankruptcy Code or any similar plan, each Disqualified Institution party hereto hereby agrees (1) not to vote on such plan, (2) if such Disqualified Institution does vote on such plan notwithstanding the restriction in the immediately foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other similar federal, state or foreign law affecting creditor’s rights), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other similar federal, state or foreign law affecting creditor’s rights) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(i) Waiver. No Disqualified Institution shall (i) be entitled to bring actions against Agent, in its role as such, (ii) receive advice of counsel or other advisors to Agent or any other Lenders or (iii) challenge the attorney client privilege of Agent or any Lender and their respective counsel.

10.10 Non-Public Information; Confidentiality.

(a) Non-Public Information.

(i) Distribution of Materials to Lenders and L/C Issuers. The Credit Parties acknowledge and agree that (A) the Loan Documents and all reports, notices, communications and other information or materials provided or delivered by, or on behalf of, the Credit Parties hereunder (collectively, the “**Borrower Materials**”) may be disseminated by, or on behalf of, Agent, and made available, to the Lenders and the L/C Issuers by posting such Borrower Materials on an E-System; and (B) certain of the Lenders (each a “**Public Lender**”) may have personnel who do not wish to receive material non-public information (“**MNPI**”) with respect to the Borrowers or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Credit Parties authorize Agent to download copies of their logos from its website and post copies thereof on an E-System.

(ii) Material Non-Public Information. The Credit Parties hereby agree that if either they, any parent company or any Subsidiary of the Credit Parties has publicly traded equity or debt securities in the United States, they shall (and shall cause such parent company or Subsidiary, as the case may be, to) (A) identify in writing, and (B) to the extent reasonably practicable, clearly and conspicuously mark such Borrower Materials that contain only information that is publicly available or that is not material for purposes of United States federal and state securities laws as “PUBLIC”. The Credit Parties agree that by identifying such Borrower Materials as “PUBLIC” or publicly filing such Borrower Materials with the Securities and Exchange Commission, then Agent, the Lenders and the L/C Issuers shall be entitled to treat such Borrower Materials as not containing any MNPI for purposes of United States federal and state securities laws. The Credit Parties further represent, warrant, acknowledge and agree that the following documents and materials shall be deemed to be PUBLIC, whether or not so marked, and do not contain any MNPI: (I) the Loan Documents, including the schedules and exhibits attached thereto, and (II) administrative materials of a customary nature prepared by the Credit Parties or Agent (including, Notices of Borrowing, Notices of Conversion/Continuation, L/C Requests, Swingline Requests and any similar requests or notices posted on or through an E-System).

Before distribution of Borrower Materials, the Credit Parties agree to execute and deliver to Agent a letter authorizing distribution of the evaluation materials to prospective Lenders and their employees willing to receive MNPI, and a separate letter authorizing distribution of evaluation materials that do not contain MNPI and represent that no MNPI is contained therein. The Credit Parties acknowledge and agree that the list of Disqualified Institutions does not constitute MNPI and may be posted to all Lenders by Agent (including any updates thereto).

(iii) Each of Agent, each Lender and each L/C Issuer acknowledges and agrees that it may receive MNPI hereunder concerning the Credit Parties and their Affiliates and agrees to use such information in compliance with all relevant policies, procedures and applicable Requirements of Laws (including United States federal and state securities laws and regulations). Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Parent or its securities for purposes of United States Federal or state securities laws.

(b) Confidential Information. Each of Agent, each Lender and each L/C Issuer agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Loan Document, except that such information may be disclosed (i) with the Borrower Representative’s consent, (ii) to Related Persons of such Lender, L/C Issuer or Agent, as the case may be, or to any Person that any L/C Issuer causes to Issue Letters of Credit hereunder, that are advised of the confidential nature of such information and are instructed to keep such information confidential in accordance with the terms hereof, (iii) to the extent such information presently is or hereafter becomes (A) publicly available other than as a result of a breach of this Section 10.10 or (B) available to or in the possession of such Lender, L/C Issuer or Agent or any of their Related Persons, as the case may be, from a source (other than any Credit Party) not known by them to be subject to disclosure restrictions, (iv) to the extent disclosure is required by applicable Requirements of Law or other legal process or requested or demanded by any Governmental Authority or any other regulatory or self-regulatory authority having jurisdiction over such Person or its Affiliates provided that (A) the applicable Credit Party shall be informed prior to such disclosure to the extent permitted by applicable Requirements of Law and to the extent practicable and (B) such disclosure shall only include that portion of the confidential information as counsel for such Lender, L/C Issuer or Agent advises must be disclosed, (v) to the extent necessary or customary for inclusion in league table measurements, (vi) (A) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency or (B) otherwise to the extent consisting of general portfolio information that does not identify Credit Parties, (vii) to current or prospective assignees, SPVs (including the investors or prospective investors therein) or participants, financing sources, direct or contractual counterparties to any Secured Rate Contracts or Secured Cash Management Agreements, or direct or contractual counterparties (including insurers and reinsurers) to any other transactions under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder and to their respective Related Persons, in each case to the extent such assignees, investors, participants, financing sources, counterparties or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 10.10 (and such

Person may disclose information to their respective Related Persons in accordance with clause (ii) above), (viii) to any other party hereto, and (ix) in connection with the exercise or enforcement of any right or remedy under any Loan Document, in connection with any litigation or other proceeding to which such Lender, L/C Issuer, Secured Swap Provider, Secured Cash Management Bank or Agent or any of their Related Persons is a party or bound, or to the extent necessary to respond to public statements or disclosures by Credit Parties or their Related Persons referring to a Lender, L/C Issuer, Secured Swap Provider, Secured Cash Management Bank or Agent or any of their Related Persons. In addition, Agent and the Lenders may disclose this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments and for purposes of general portfolio, benchmarking and market data analysis. In the event of any conflict between the terms of this Section 10.10 and those of any other Contractual Obligation entered into with any Credit Party (whether or not a Loan Document), the terms of this Section 10.10 shall govern.

(c) Tombstones. Each Credit Party consents to the publication by Agent, Arranger or any Lender of any press releases, tombstones, advertising or other promotional materials (including via any Electronic Transmission) relating to the financing transactions contemplated by this Agreement using such Credit Party's name, product photographs, logo or trademark. Agent or such lender shall provide a draft of any such press release, advertising or other promotional material to the Borrower Representative for review and comment prior to the publication thereof.

(d) Press Release and Related Matters. No Credit Party shall, and no Credit Party shall permit any of its Affiliates to, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of securities of any Credit Party) using the name, logo or otherwise referring to Capital One or of any of its Affiliates, the Loan Documents or any transaction contemplated herein or therein to which Capital One or any of its Affiliates is party without the prior written consent of Capital One or such Affiliate except to the extent required to do so under applicable Requirements of Law and then, only after consulting with Capital One.

10.11 Set-off, Sharing of Payments.

(a) Right of Setoff. Each of Agent, each Lender, each L/C Issuer and each Affiliate (including each branch office thereof) of any of them is hereby authorized, without notice or demand (each of which is hereby waived by each Credit Party), at any time and from time to time during the continuance of any Event of Default and to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final) at any time held and other Indebtedness, claims or other obligations at any time owing by Agent, such Lender, such L/C Issuer or any of their respective Affiliates to or for the credit or the account of the Borrowers or any other Credit Party against any Obligation of any Credit Party now or hereafter existing, whether or not any demand was made under any Loan Document with respect to such Obligation and even though such Obligation may be unmatured. No Lender or L/C Issuer shall exercise any such right of setoff without the prior consent of Agent or Required Lenders. Each of Agent, each Lender and each L/C Issuer agrees promptly to notify the Borrower Representative and Agent after any such setoff and application made by such Lender or its Affiliates; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 10.11 are in addition to any other rights and remedies (including other rights of

setoff) that Agent, the Lenders, the L/C Issuer, their Affiliates and the other Secured Parties, may have. Notwithstanding the foregoing, at any time that any of the Obligations shall be secured by real property located in California, no Lender shall exercise a right of setoff, lender's lien or counterclaim or take any court or administrative action or institute any proceeding to enforce any provision of this agreement or any loan document unless it is taken with the consent of the Lenders required by Section 8.2 of this Agreement or approved in writing by Agent, if such setoff or action or proceeding would or might (pursuant to Sections 580a, 580b, 580d and 726 of the California Code of Civil Procedure or section 2924 of the California Civil Code, if applicable, or otherwise) affect or impair the validity, priority, or enforceability of the liens granted to Agent pursuant to the Collateral Documents or the enforceability of the Obligations hereunder, and any attempted exercise by any Lender or any such right without obtaining such consent of the parties as required above, shall be null and void. This paragraph shall be solely for the benefit of each of the Secured Parties and Agent hereunder.

(b) Sharing of Payments, Etc. If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of any Credit Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or "proceeds" (as defined under the applicable UCC) of Collateral) (and other than pursuant to Section 10.9, Section 10.20, Article XI, any purchase option pursuant to any intercreditor agreement or any subordination agreement to which Agent is a party or any payment to a Lender that has not accepted an Extension Offer in respect of the original terms of those of its Loan and Commitments that, as to Lenders that accepted such Extension Offer, were extended as to such Lenders) and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been received by Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrowers, applied to repay the Obligations in accordance herewith); provided, however, that (i) if such payment is rescinded or otherwise recovered from such Lender or L/C Issuer in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender or L/C Issuer without interest and (ii) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Credit Party in the amount of such participation. If a Defaulting Lender receives any such payment as described in the previous sentence, such Lender shall turn over such payments to Agent in an amount that would satisfy the cash collateral requirements set forth in Section 2.11(e).

10.12 Counterparts. This Agreement may be executed in any number of counterparts and by different parties 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. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

10.13 Severability; Captions; Independence of Provisions. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder. The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement. The parties hereto acknowledge that this Agreement and the other Loan Documents may use several different limitations, tests or

measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

10.14 Interpretation. **This Agreement is the result of negotiations among and has been reviewed by counsel to Credit Parties, Agent, each Lender and other parties hereto, and is the product of all parties hereto. Accordingly, this Agreement and the other Loan Documents shall not be construed against the Lenders or Agent merely because of Agent's or Lenders' involvement in the preparation of such documents and agreements. Without limiting the generality of the foregoing, each of the parties hereto has had the advice of counsel with respect to Sections 10.16 and 10.17.**

10.15 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Borrowers, the Lenders, the L/C Issuers party hereto, Agent and, subject to the provisions of Section 9.11, each other Secured Party, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Neither Agent nor any Lender shall have any obligation to any Person not a party to this Agreement or the other Loan Documents.

10.16 Governing Law and Jurisdiction.

(a) Governing Law. The laws of the State of New York shall govern all matters arising out of, in connection with or relating to this Agreement, including its validity, interpretation, construction, performance and enforcement (including any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest).

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document (other than any French Collateral Document) shall be brought in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America sitting in the Southern District of New York and, by execution and delivery of this Agreement, each Borrower and each other Credit Party executing this Agreement hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts; provided that nothing in this Agreement shall limit the right of Agent to commence any proceeding (other than against any French Guarantor) in the federal or state courts of any other jurisdiction to the extent Agent determines that such action is necessary or appropriate to exercise its rights or remedies under the Loan Documents. The parties hereto (and, to the extent set forth in any other Loan Document, each other Credit Party) hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(c) Service of Process. Each Credit Party hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of the Borrowers specified herein (and shall be effective when such mailing shall be effective, as provided therein). Each Credit Party 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.

(d) Non-Exclusive Jurisdiction. Nothing contained in this Section 9.18 shall affect the right of Agent or any Lender to serve process in any other manner permitted by applicable Requirements of Law or commence legal proceedings or otherwise proceed against any Credit Party (other than against any French Guarantor) in any other jurisdiction.

10.17 Waiver of Jury Trial. THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE. EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PERSON OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY 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 THE LOAN DOCUMENTS, AS APPLICABLE, BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.18 Entire Agreement; Release; Survival.

(a) THE LOAN DOCUMENTS EMBODY THE ENTIRE AGREEMENT OF THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS RELATING TO THE SUBJECT MATTER THEREOF AND ANY PRIOR LETTER OF INTEREST, COMMITMENT LETTER, CONFIDENTIALITY AND SIMILAR AGREEMENTS INVOLVING ANY CREDIT PARTY AND ANY LENDER OR ANY L/C ISSUER OR ANY OF THEIR RESPECTIVE AFFILIATES RELATING TO A FINANCING OF SUBSTANTIALLY SIMILAR FORM, PURPOSE OR EFFECT OTHER THAN THE FEE LETTERS. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT, THE TERMS OF THIS AGREEMENT SHALL GOVERN (UNLESS OTHERWISE EXPRESSLY STATED IN SUCH OTHER LOAN DOCUMENTS OR SUCH TERMS OF SUCH OTHER LOAN DOCUMENTS ARE NECESSARY TO COMPLY WITH APPLICABLE REQUIREMENTS OF LAW, IN WHICH CASE SUCH TERMS SHALL GOVERN TO THE EXTENT NECESSARY TO COMPLY THEREWITH).

(b) Execution of this Agreement by the Credit Parties constitutes a full, complete and irrevocable release of any and all claims which each Credit Party may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. In no event shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Each Credit Party signatory hereto hereby waives, releases and agrees (and shall cause each other Credit Party to waive, release and agree) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) (i) Any indemnification or other protection provided to any Indemnitee pursuant to this Section 10.18, Sections 10.5 (Costs and Expenses), and 10.6 (Indemnity), and Article IX (Agent) and Article XI (Taxes, Yield Protection and Illegality), and (ii) the provisions of Section 8.1 of the Guaranty and Security Agreement, in each case, shall (x) survive the termination of the Commitments and the payment in full of all other Obligations and (y) with respect to clause

(i) above, inure to the benefit of any Person that at any time held a right thereunder (as an Indemnitee or otherwise) and, thereafter, its successors and permitted assigns.

10.19 USA Patriot Act. Each Lender that is subject to the USA Patriot Act (and Agent (for itself and not on behalf of any Lender)) hereby notifies the Credit Parties that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or Agent to identify each Credit Party in accordance with the USA Patriot Act.

10.20 Replacement of Lender. Within forty-five days after: (i) receipt by the Borrower Representative of written notice and demand from (A) any Lender (an “**Affected Lender**”) for payment of additional costs as provided in Sections 11.1, 11.3 and/or 10.6 or that has become a Defaulting Lender or (B) any SPV or participant (an “**Affected SPV/Participant**”) for payment of additional costs as provided in Section 10.9(f), unless the option or participation of such Affected SPV/Participant shall have been terminated prior to the exercise by the Borrowers of their rights hereunder; or (ii) any failure by any Lender (other than Agent or an Affiliate of Agent) to consent to a requested amendment, waiver or modification to any Loan Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender (or each Lender directly affected thereby, as applicable) is required with respect thereto or any failure by any Lender to accept any Extension Offer, the Borrower Representative may, at its option, notify (A) in the case of clause (i)(A) or (ii) above, Agent and such Affected Lender (or such non-consenting Lender) of the Borrowers’ intention to obtain, at the Borrowers’ expense, a replacement Lender (“**Replacement Lender**”) for such Affected Lender (or such non-consenting Lender), or (B) in the case of clause (i)(B) above, Agent, such Affected SPV/Participant, if known, and the applicable Lender (such Lender, a “**Participating Lender**”) that (1) granted to such Affected SPV/Participant the option to make all or any part of any Loan that such Participating Lender would otherwise be required to make hereunder or (2) sold to such Affected SPV/Participant a participation in or to all or a portion of its rights and obligations under the Loan Documents, of the Borrowers’ intention to obtain, at the Borrowers’ expense, a Replacement Lender for such Participating Lender, in each case, which Replacement Lender shall be reasonably satisfactory to Agent. In the event the Borrowers obtain a Replacement Lender within forty-five (45) days following notice of its intention to do so, the Affected Lender (or such non-consenting Lender) or Participating Lender, as the case may be, shall sell and assign its Loans and Commitments to such Replacement Lender, at par, provided that the Borrowers have reimbursed such Affected Lender or Affected SPV/Participant, as applicable, for its increased costs for which it is entitled to reimbursement under this Agreement through the date of such sale and assignment, and in the case of a Participating Lender being replaced by a Replacement Lender, (x) all right, title and interest in and to the Obligations and Commitments so assigned to the Replacement Lender shall be assigned free and clear of all Liens or other claims (including pursuant to the underlying option or participation granted or sold to the Affected SPV/Participant, but without affecting any rights, if any, of the Affected SPV/Participant to the proceeds constituting the purchase price thereof) of the Affected SPV/Participant, and (y) to the extent required by the underlying option or participation documentation, such Participating Lender shall apply all or a portion of the proceeds received by it as a result of such assignment, as applicable, to terminate in full the option or participation of such Affected SPV/Participant. In the event that a replaced Lender does not execute an Assignment pursuant to Section 10.9 within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 10.20 and presentation to such replaced Lender of an Assignment evidencing an assignment pursuant to this Section 10.20, the Borrower Representative shall be entitled (but not obligated) to execute such an Assignment on behalf of such replaced Lender, and any such Assignment so executed by the Borrower Representative, the Replacement Lender and Agent, shall be effective for purposes of this Section 10.20 and Section 10.9. Notwithstanding the foregoing, with respect to a Lender that is a Defaulting Lender, Agent may, but shall not be obligated to, obtain a Replacement Lender and execute an Assignment on behalf of such Defaulting Lender at any time with three (3) Business Days’ prior notice to such Lender (unless notice is not practicable under the circumstances) and cause such

Lender's Loans and Commitments to be sold and assigned, in whole or in part, at par. Upon any such assignment and payment and compliance with the other provisions of Section 10.9, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof; provided, any rights of such replaced Lender to indemnification hereunder shall survive.

10.21 Joint and Several. The obligations of the Credit Parties hereunder and under the other Loan Documents are joint and several. Without limiting the generality of the foregoing, reference is hereby made to Article II of the Guaranty and Security Agreement, to which the obligations of Borrowers and the other Credit Parties are subject.

10.22 Creditor-Debtor Relationship; No Advisory or Fiduciary Responsibility. The relationship between Agent, each Lender and the L/C Issuer, on the one hand, and the Credit Parties, on the other hand, is solely that of creditor and debtor. No Secured Party has any fiduciary relationship or duty to any Credit Party arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between the Secured Parties and the Credit Parties by virtue of, any Loan Document or any transaction contemplated therein. 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 Borrower and each other Credit Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Agent and any Affiliate thereof, each Lead Arranger and the Lenders are arm's-length commercial transactions between the Borrowers, each other Credit Party and their respective Affiliates, on the one hand, and the Agent and, as applicable, its Affiliates (including each Lead Arranger) and the Lenders and their Affiliates (collectively, solely for purposes of this Section, the "**Lenders**"), on the other hand, (ii) each of the Borrowers and the other Credit Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower and each other Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Agent and its Affiliates (including each Lead Arranger) and each Lender each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for any Borrower, any other Credit Party or any of their respective Affiliates, or any other Person and (ii) neither the Agent, any of its Affiliates (including each Lead Arranger) nor any Lender has any obligation to any Borrower, any other Credit Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Agent and its Affiliates (including each Lead Arranger) and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Credit Parties and their respective Affiliates, and neither the Agent, any of its Affiliates (including each Lead Arranger) nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Credit Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Credit Party hereby waives and releases any claims that it may have against the Agent, any of its Affiliates (including each Lead Arranger) or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

10.23 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under the Guaranty and Security Agreement in respect of Swap Obligations under any Secured Rate Contract (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.23 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.23, or otherwise under the Guaranty and Security Agreement, voidable under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 10.23 shall remain in full force and effect until the guarantees in respect of

Swap Obligations under each Secured Rate Contract have been discharged, or otherwise released or terminated in accordance with the terms of this Agreement. Each Qualified ECP Guarantor intends that this Section 10.23 constitute, and this Section 10.23 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

10.24 Secured Swap Providers and Secured Cash Management Banks. No Secured Swap Provider or Secured Cash Management Bank that obtains the benefits of the Guaranty and Security Agreement or any Collateral by virtue of the provisions hereof or of any other Loan 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 X to the contrary, the Agent shall not be required to verify the existence, amount or payment of any Secured Rate Contract Obligations or Secured Cash Management Obligations. Upon the request of Agent, each Secured Swap Provider and Secured Cash Management Bank will promptly provide Agent with such information and supporting documentation with respect to its Secured Rate Contract Obligations and Secured Cash Management Obligations as Agent shall request, including the amounts (contingent and/or due and payable) thereof.

10.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

10.26 Acknowledgement Regarding any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Rate Contracts or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any

Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.26, the following terms have the following meanings:

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Covered Entity**” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Default Right**” has the meaning assigned to that term in, and interpreted in accordance with, 12 C.F.R. § § 252.81, 47.2 or 382.1 as applicable.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

ARTICLE XI

TAXES, YIELD PROTECTION AND ILLEGALITY

11.1 Taxes.

(a) Except as required by a Requirement of Law, each payment by any Credit Party under any Loan Document shall be made free and clear of all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax, penalties or other Liabilities with respect thereto (collectively, “**Taxes**”).

(b) If any Taxes shall be required by any Requirement of Law to be deducted from or in respect of any amount payable under any Loan Document to any Secured Party (i) if such Tax is an Indemnified Tax, such amount payable by the relevant Credit Party shall be increased as necessary to ensure that, after all required deductions for Indemnified Taxes are made (including deductions applicable to any increases to any amount under this Section 11.1), such Secured Party receives the amount it would have received had no such deductions been made, (ii) the relevant Credit Party or other applicable withholding agent shall make such deductions, (iii) the relevant Credit Party or other applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law and (iv) within 30 days after such payment is made, the relevant Credit Party shall deliver to Agent an original or certified copy of a receipt evidencing such payment or other evidence of payment reasonably satisfactory to Agent.

(c) In addition, the Borrowers agree to pay, and authorize Agent to pay in their name, any stamp, documentary, excise or property Tax, charges or similar levies imposed by any applicable Requirement of Law or Governmental Authority and all Liabilities with respect thereto (including by reason of any delay in payment thereof), in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document or any transaction contemplated therein (collectively, “**Other Taxes**”). The Swing Lender may, without any need for notice, demand or consent from the Borrowers or the Borrower Representative, by making funds available to Agent in the amount equal to any such payment, make a Swing Loan to the Borrowers in such amount, the proceeds of which shall be used by Agent in whole to make such payment. Within 30 days after the date of any payment of Other Taxes by any Credit Party, the Borrowers shall furnish to Agent the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably satisfactory to Agent.

(d) The Credit Parties hereby acknowledge and agree that neither Capital One nor any Affiliate of Capital One has provided any Tax advice to any Tax Affiliate in connection with the transactions contemplated hereby.

(e) The Borrowers shall reimburse and indemnify, within 30 days after receipt of demand therefor (with copy to Agent), each Secured Party for all Indemnified Taxes (including any Indemnified Taxes imposed by any jurisdiction on amounts payable under this Section 11.1) paid or payable by such Secured Party and any Liabilities arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. A certificate of the Secured Party (or of Agent on behalf of such Secured Party) claiming any compensation under this clause (e), setting forth the amounts to be paid thereunder and delivered to the Borrower Representative with a copy to Agent, shall be conclusive, binding and final for all purposes, absent manifest error.

(f) Any Lender claiming any additional amounts payable pursuant to this Section 11.1 shall use its reasonable efforts (consistent with its internal policies and Requirements of Law) to change the jurisdiction of its Lending Office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with such change.

(g) (i) Each Non-U.S. Lender Party that, at any of the following times, is entitled to an exemption from United States withholding Tax or, after a change in any Requirement of Law, is subject to such withholding Tax at a reduced rate under an applicable Tax treaty, shall (w) on or prior to the date such Non-U.S. Lender Party becomes a “Non-U.S. Lender Party” hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested by the Borrower Representative or Agent (or, in the case of a participant or SPV, the relevant Lender), provide Agent and the Borrower Representative (or, in the case of a participant or SPV, the relevant Lender) with executed copies of each of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding Tax because the income is effectively connected with a U.S. trade or business), W-8BEN or W-8BEN-E (claiming exemption from, or a reduction of, U.S. withholding Tax) and/or W-8IMY (together with appropriate forms, certifications and supporting statements) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Section 871(h) or 881(c) of the Code, Form W-8BEN or W-8BEN-E (claiming exemption from U.S. withholding Tax) or any successor form and a certificate in form and substance acceptable to Agent that such Non-U.S. Lender Party is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrowers within the meaning of Section 881(c)(3)(B) of the Code or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to such exemption from United States withholding Tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender Party under the Loan Documents. Unless the Borrower Representative and Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States withholding Tax or are subject to such Tax at a rate reduced by an applicable Tax treaty, the Credit Parties and Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

(ii) Each U.S. Lender Party shall (A) on or prior to the date such U.S. Lender Party becomes a “U.S. Lender Party” hereunder, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (g) and (D) from time to time if requested by the Borrower Representative or Agent (or, in the case of a participant or SPV, the relevant Lender), provide Agent and the Borrower Representative (or, in the case of a participant or SPV, the relevant Lender) with executed copies of Form W-9 (certifying that such U.S. Lender Party is entitled to an exemption from U.S. backup withholding Tax) or any successor form.

(iii) Each Lender having sold a participation in any of its Obligations or identified an SPV as such to Agent shall collect from such participant or SPV the documents described in this clause (g) and provide them to Agent.

(iv) If a payment made to a Non-U.S. Lender Party would be subject to United States federal withholding Tax imposed by FATCA if such Non-U.S. Lender Party fails to comply with the applicable reporting requirements of FATCA, such Non-U.S. Lender

Party shall deliver to Agent and the Borrower Representative any documentation under any Requirement of Law or reasonably requested by Agent or the Borrower Representative sufficient for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Non-U.S. Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) If any Secured Party determines, in its reasonable discretion exercised in good faith, that it has received a refund of any Indemnified Taxes as to which it has been indemnified pursuant to this Section 11.1 (including by the payment of additional amounts pursuant to Section 11.1(b)), it shall pay to the relevant Credit Party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 11.1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Secured Party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such Credit Party, upon the request of such Secured Party, shall repay to such Secured Party the amount paid over pursuant to this Section 11.1(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Secured Party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 11.1(h), in no event shall the Secured Party be required to pay any amount to a Credit Party pursuant to this Section 11.1(h) the payment of which would place the Secured Party in a less favorable net after-Tax position than the Secured Party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 11.1(h) shall not be construed to require any Secured Party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Credit Party or any other Person.

11.2 Illegality. If after the date hereof any Lender shall determine that the introduction of any Requirement of Law, or any change in any Requirement of Law or in the interpretation or administration thereof, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make LIBOR Rate Loans, then, on notice thereof by such Lender to the Borrowers through Agent, the obligation of that Lender to make LIBOR Rate Loans shall be suspended until such Lender shall have notified Agent and the Borrower Representative that the circumstances giving rise to such determination no longer exists.

(a) Subject to clause (c) below, if any Lender shall determine that it is unlawful to maintain any LIBOR Rate Loan, the Borrowers shall prepay in full all LIBOR Rate Loans of such Lender then outstanding, together with interest accrued thereon, either on the last day of the Interest Period thereof if such Lender may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Rate Loans, together with any amounts required to be paid in connection therewith pursuant to Section 11.4.

(b) If the obligation of any Lender to make or maintain LIBOR Rate Loans has been terminated, the Borrower Representative may elect, by giving notice to such Lender through Agent that all Loans which would otherwise be made by any such Lender as LIBOR Rate Loans shall be instead Base Rate Loans.

(c) Before giving any notice to Agent pursuant to this Section 11.2, the affected Lender shall designate a different Lending Office with respect to its LIBOR Rate Loans if such designation will avoid the need for giving such notice or making such demand and will not, in the judgment of the Lender, be illegal or otherwise disadvantageous to the Lender.

11.3 Increased Costs and Reduction of Return.

(a) If any Lender or L/C Issuer shall determine that, due to either (i) the introduction of, or any change in, or in the interpretation of, any Requirement of Law 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), in the case of either clause (i) or (ii) subsequent to the date hereof, (x) there shall be any increase in the cost to such Lender or L/C Issuer of agreeing to make or making, funding or maintaining any LIBOR Rate Loans or of Issuing or maintaining any Letter of Credit or (y) the Lender or L/C Issuer shall be subject to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, then the Borrowers shall be liable for, and shall from time to time, within thirty (30) days of demand therefor by such Lender or L/C Issuer (with a copy of such demand to Agent), pay to Agent for the account of such Lender or L/C Issuer, additional amounts as are sufficient to compensate such Lender or L/C Issuer for such increased costs or such Taxes; provided, that the Borrowers shall not be required to compensate any Lender or L/C Issuer pursuant to this Section 11.3(a) for any increased costs incurred more than 180 days prior to the date that such Lender or L/C Issuer notifies the Borrower Representative, in writing of the increased costs and of such Lender's or L/C Issuer's intention to claim compensation therefor; provided, further, that if the circumstance giving rise to such increased costs is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) If any Lender or L/C Issuer shall have determined that:

(i) the introduction of any Capital Adequacy Regulation;

(ii) any change in any Capital Adequacy Regulation;

(iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof; or

(iv) compliance by such Lender or L/C Issuer (or its Lending Office) or any entity controlling the Lender or L/C Issuer, with any Capital Adequacy Regulation;

affects the amount of capital required or expected to be maintained by such Lender or L/C Issuer or any entity controlling such Lender or L/C Issuer and (taking into consideration such Lender's or such entities' policies with respect to capital adequacy and such Lender's or L/C Issuer's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitment(s), loans, credits or obligations under this Agreement, then, within thirty (30) days of demand of such Lender or L/C Issuer (with a copy to Agent), the Borrowers shall pay to such Lender or L/C Issuer, from time to time as specified by such Lender or L/C Issuer, additional amounts sufficient to compensate such Lender or L/C Issuer (or the entity controlling the Lender

or L/C Issuer) for such increase; provided, that the Borrowers shall not be required to compensate any Lender or L/C Issuer pursuant to this Section 11.3(b) for any amounts incurred more than 180 days prior to the date that such Lender or L/C Issuer notifies the Borrower Representative, in writing of the amounts and of such Lender's or L/C Issuer's intention to claim compensation therefor; provided, further, that if the event giving rise to such increase is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(c) Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case in respect of this clause (ii) pursuant to Basel III, shall, in each case, be deemed to be a change in a Requirement of Law under Section 11.3(a) above and/or a change in Capital Adequacy Regulation under Section 11.3(b) above, as applicable, regardless of the date enacted, adopted or issued.

11.4 Funding Losses. The Borrowers agree to reimburse each Lender and to hold each Lender harmless from any loss or expense which such Lender may sustain or incur as a consequence of:

(a) the failure of the Borrowers to make any payment or mandatory prepayment of principal of any LIBOR Rate Loan (including payments made after any acceleration thereof);

(b) the failure of the Borrowers to borrow, continue or convert a Loan after the Borrower Representative has given (or is deemed to have given) a Notice of Borrowing or a Notice of Conversion/Continuation;

(c) the failure of the Borrowers to make any prepayment after the Borrowers have given a notice in accordance with Section 2.7;

(d) the prepayment (including pursuant to Section 2.8) of a LIBOR Rate Loan on a day which is not the last day of the Interest Period with respect thereto; or

(e) the conversion pursuant to Section 2.6 of any LIBOR Rate Loan to a Base Rate Loan on a day that is not the last day of the applicable Interest Period;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its LIBOR Rate Loans hereunder or from fees payable to terminate the deposits from which such funds were obtained; provided that, with respect to the expenses described in clauses (d) and (e) above, such Lender shall have notified Agent of any such expense within two (2) Business Days of the date on which such expense was incurred. Solely for purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 10.4 and under Section 10.3(a): each LIBOR Rate Loan made by a Lender (and each related reserve, special deposit or similar requirement) shall be conclusively deemed to have been funded at the LIBOR used in determining the interest rate for such LIBOR Rate Loan by a matching deposit or other borrowing in the interbank eurodollar market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan is in fact so funded.

11.5 Inability to Determine Rates. If Agent shall have determined in good faith that for any reason adequate and reasonable means do not exist for ascertaining the LIBOR for any requested Interest Period with respect to a proposed LIBOR Rate Loan or that the LIBOR applicable pursuant to Section 2.3(a) for any requested Interest Period with respect to a proposed LIBOR Rate Loan does not adequately and fairly reflect the cost to the Lenders of funding or maintaining such Loan, Agent will forthwith give notice of

such determination to the Borrower Representative and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBOR Rate Loans hereunder shall be suspended until Agent revokes such notice in writing. Upon receipt of such notice, the Borrower Representative may revoke any Notice of Borrowing or Notice of Conversion/Continuation then submitted by it. If the Borrower Representative does not revoke such notice, the Lenders shall make, convert or continue the Loans, as proposed by the Borrower Representative, in the amount specified in the applicable notice submitted by the Borrower Representative, but such Loans shall be made, converted or continued as Base Rate Loans.

11.6 Effect of Benchmark Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document (any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 11.6):

(a) *Replacing USD LIBOR*. On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of USD LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of 1-month, 3-month, 6-month and 12-month USD LIBOR tenor settings. On the earlier of (i) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if the then-current Benchmark is USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Compounded SOFR, all interest payments will be payable on a quarterly basis.

(b) *Replacing Future Benchmarks*. Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(c) *Benchmark Replacement Conforming Changes*. In connection with the implementation and administration of a Benchmark Replacement, the Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(d) *Notices; Standards for Decisions and Determinations.* The Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 11.6, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 11.6.

(e) *Unavailability of Tenor of Benchmark.* At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including USD LIBOR), then the Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

11.7 Reserves on LIBOR Rate Loans. The Borrowers shall pay to each Lender, as long as such Lender shall be required under regulations of the Federal Reserve Board to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as “**Eurocurrency liabilities**”), additional costs on the unpaid principal amount of each LIBOR Rate Loan equal to actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), payable on each date on which interest is payable on such Loan provided the Borrower Representative shall have received at least fifteen (15) days’ prior written notice (with a copy to Agent) of such additional interest from the Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest shall be payable fifteen (15) days from receipt of such notice.

11.8 Certificates of Lenders. Any Lender claiming reimbursement or compensation pursuant to this Article XI shall deliver to the Borrower Representative (with a copy to Agent) a certificate setting forth in reasonable detail the amount payable to such Lender hereunder and such certificate shall be conclusive and binding on the Borrowers in the absence of manifest error.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

BORROWER REPRESENTATIVE AND BORROWER:

AMPHASTAR PHARMACEUTICALS, INC.

By: /s/ William J. Peters

Name: Bill Peters, M.B.A.

Title: Chief Financial Officer

FEIN: 33-0702205

Address for notices:

Amphastar Pharmaceuticals, Inc.
11570 6th Street
Rancho Cucamonga, California 91730
Attn: Chief Financial Officer

With a copy to, which shall not constitute notice:

Amphastar Pharmaceuticals, Inc.
11570 6th Street
Rancho Cucamonga, California 91730
Attn: Legal Department

Address for wire transfers:

Bank Name:	Cathay Bank
City and State:	City of Industry, CA
ABA/Routing No:	*****
Account Name:	Amphastar Pharmaceuticals, Inc.
Account No:	*****
Reference:	Capital One Loan Advance

Signature Page of Credit Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

INTERNATIONAL MEDICATION SYSTEMS, LIMITED.

By: /s/ William J. Peters

Name: Bill Peters, M.B.A.

Title: President

FEIN: 94-3070657

ARMSTRONG PHARMACEUTICALS, INC.

By: /s/ Rong Zhou

Name: Rong Zhou

Title: President

FEIN: 65-1078920

Signature Page of Credit Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

CAPITAL ONE, NATIONAL ASSOCIATION, as Agent, Swing Lender and as a Lender

By: /s/ Peter Itz

Name: Peter Itz

Title: Its Duly Authorized Signatory

Address for notices:

Capital One, National Association
Two Bethesda Metro Center, Suite 600, Bethesda,
Maryland 20814
Attn: Peter Itz, Account Officer
Facsimile: (301) 664-9855

With a copy to:

Capital One, National Association
Two Bethesda Metro Center, Suite 600,
Bethesda, Maryland 20814
Attn: Capital One Legal Department
Facsimile: (301) 664-9866

Address for payments:

ABA No. *****
Account Number: *****
Capital One, N.A.
Account Name: Agency Clearing
Reference: Amphastar Pharmaceuticals, Inc.

Signature Page of Credit Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written

EAST WEST BANK,
as a Lender

By: /s/ Rebecca Lee

Name: Rebecca Lee

Title: Senior Vice President

Address for notices:

19540 Jamboree Road, Suite 150
Irvine, CA 92612

Lending Office:

19540 Jamboree Road, Suite 150
Irvine, CA 92612

Signature Page of Credit Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written

WELLS FARGO BANK, N.A.,
as a Lender

By: /s/ Brandon Moss
Name: Brandon Moss

Title: Assistant Vice President

Address for notices:

7711 Plantation Rd.
Roanoke, Virginia 24019

Lending Office:

550 South Tryon St.
12th Floor
Charlotte, North Carolina 28202

Signature Page of Credit Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written

CATHAY BANK,
as a Lender

By: /s/ Kenneth Chan
Name: Kenneth Chan
Title: FVP/Team Manager

Address for notices:

9650 Flair Dr.
El Monte, CA 91731

Lending Office:

9650 Flair Dr.
El Monte, CA 91731

Schedule 1.1
Prior Indebtedness

Cathay Loans

- Loan Agreement #3000029918-100, dated April 22, 2014, by and between Cathay Bank and Amphastar Pharmaceuticals, Inc. as amended, each other document, security agreement and all other related documents, agreements, instruments and certificates entered into in connection therewith, in each case, as amended.
- Loan Agreement #2000017069-100, dated August 14, 2017, by and between Cathay Bank and Armstrong Pharmaceuticals, Inc. as modified, each other document, promissory note, security agreement and all other related documents, agreements, instruments and certificates entered into in connection therewith, in each case as modified.
- Revolving Loan and Security Agreement #2000015397-20100, dated August 14, 2017, by and between Cathay Bank and Amphastar Pharmaceuticals, Inc. as amended, each other document, security agreement and all other related documents, agreements, instruments and certificates entered into in connection therewith, in each case as amended.

East West Bank Loans

- Business Loan Agreement, dated December 31, 2010, by and between East West Bank and International Medication Systems, Limited, each other document, promissory note, security agreement and all other related documents, agreements, instruments and certificates entered into in connection therewith, in each case, as amended.
 - Business Loan Agreement, dated September 8, 2016, by and between East West Bank and Amphastar Pharmaceuticals, Inc., each other document, promissory note, security agreement and all other related documents, agreements, instruments and certificates entered into in connection therewith, in each case, as amended.
 - Business Loan Agreement, dated June 28, 2017, by and between East West Bank and International Medication Systems, Limited, each other document, promissory note, security agreement and all other related documents, agreements, instruments and certificates entered into in connection therewith, in each case, as amended.
 - Business Loan Agreement, dated January 8, 2019, by and between East West Bank and International Medication Systems, Limited, each other document, promissory note, security agreement and all other related documents, agreements, instruments and certificates entered into in connection therewith, in each case, as amended.
 - Business Loan Agreement, dated September 1, 2020, by and between East West Bank and International Medication Systems, Limited, each other document, promissory note, security agreement and all other related documents, agreements, instruments and certificates entered into in connection therewith, in each case, as amended.
-

Schedule 2.1(a)
Initial Term Loan Commitments

Lender	Term Loan Commitment
Capital One, National Association	\$20,000,000.00
East West Bank	\$16,000,000.00
Wells Fargo Bank, N.A.	\$12,500,000.00
Cathay Bank	\$12,500,000.00
Fifth Third Bank, National Association	\$9,000,000.00
Total:	\$70,000,000.00

Schedule 2.1(b)
Revolving Loan Commitments

Lender	Revolving Loan Commitment
Capital One, National Association	\$20,000,000.00
East West Bank	\$16,000,000.00
Wells Fargo Bank, N.A.	\$12,500,000.00
Cathay Bank	\$12,500,000.00
Fifth Third Bank, National Association	\$9,000,000.00
Total:	\$70,000,000.00

Schedule 4.5
Litigation

None.

Schedule 4.7
ERISA

None.

Schedule 4.8
Margin Stock

None.

Schedule 4.9
Real Estate

See attached.

Schedule 4.12
Environmental

None.

Schedule 4.15
Labor Relations

(a)

- Amphastar France Pharmaceuticals S.A.S.: Collective bargaining (Convention collective nationale de l'industrie pharmaceutique (brochure JO n°3104 - IDCC 176)
- Amphastar France Pharmaceuticals S.A.S. has work council (CSE or « Comité social et économique »). It has been elected by the employees in November 2018.
- Amphastar France Pharmaceuticals S.A.S maintains the following agreement, which is similar to a collective bargaining agreement, but solely with the company: Avantages Sociaux Diosynth, dated as of June 1, 2005.

(b)

None

(c)

None

Schedule 4.17
Brokers' and Transaction Fees

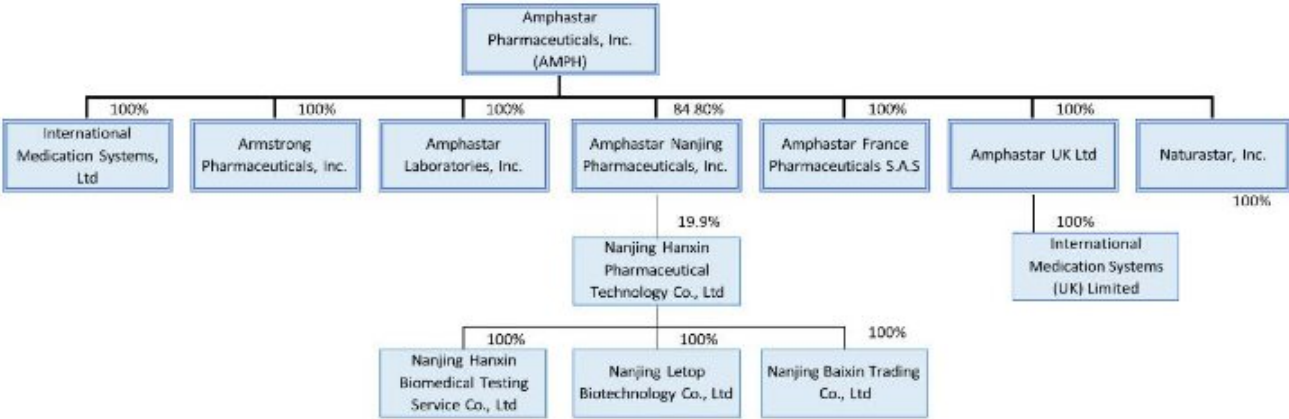
None.

Schedule 4.18
Ventures, Subsidiaries and Affiliates; Outstanding Stock

<u>Credit Party/Subsidiary/ Other Persons with Ownership Interests</u>	<u>Subsidiary/ Joint Venture/ Partership</u>	<u>Ownership Interest</u>	<u>Jurisdiction of Formation</u>
Amphastar Pharmaceuticals, Inc.	Armstrong Pharmaceuticals, Inc.	100%	Delaware
Amphastar Pharmaceuticals, Inc.	International Medication Systems, Limited	100%	Delaware
Amphastar Pharmaceuticals, Inc.	Amphastar France Pharmaceuticals, S.A.S.	100%	France
Amphastar Pharmaceuticals, Inc.	Amphastar Laboratories, Inc.	100%	Delaware
Amphastar Pharmaceuticals, Inc.	Amphastar UK Ltd.	100%	United Kingdom
Amphastar Pharmaceuticals, Inc.	Naturastar, Inc.	100%	California
Amphastar Pharmaceuticals, Inc.	Amphastar Nanjing Pharmaceuticals, Inc.	84.8%	China
Nanjing Qianqia Enterprise Management Consulting LLP		15.2%	
Amphastar UK Ltd.	International Medication Systems (UK) Limited	100%	United Kingdom
Amphastar Nanjing Pharmaceuticals, Inc.	Nanjing Hanxin Pharmaceutical Technology Co., Ltd	19.9%	China

See attached organizational chart.

Rev: December 23, 2020



Schedule 4.19
Jurisdiction of Organization; Chief Executive Office

<u>Legal Name</u>	<u>Jurisdiction</u>	<u>Date of Formation</u>	<u>Parent</u>	<u>Organizational Identification No.</u>	<u>Chief Executive Office</u>
Amphastar Pharmaceuticals, Inc.	Delaware	6/24/2014	N/A	*****	11570 Sixth St., Rancho Cucamonga, CA 91730
Armstrong Pharmaceuticals, Inc.	Delaware	2/20/2001	Amphastar Pharmaceuticals, Inc.	*****	25 John Rd, Canton, MA 02021
International Medication Systems, Limited	Delaware	12/16/1991	Amphastar Pharmaceuticals, Inc.	*****	1886 Santa Anita Ave, S.El Monte, CA 91733

Schedule 4.20
Deposit Accounts and Other Accounts

See attached.

Schedule 4.23
Regulatory Matters

See attached.

Schedule 5.16
Post-Closing Obligations

1. Within two (2) days of the Closing Date (or such longer period as the Agent may determine in its sole discretion), the Credit Parties shall cause to be delivered to the Agent a property insurance certificate in accordance with Section 5.6 of the Credit Agreement and otherwise in form and substance reasonably satisfactory to the Agent.
 2. Within fourteen (14) days after the Closing Date (or such longer period as the Agent may determine in its sole discretion), the Credit Parties shall cause to be delivered to the Agent each original stock certificate or the equivalent thereof representing all of the issued and outstanding Stock (other than Excluded Equity (as defined in the Guaranty and Security Agreement)) of each Credit Party (other than Amphastar) and each Subsidiary of any Credit Party, together with the original transfer power with respect to each such certificate or equivalent thereof duly executed in blank, in each case, with respect to such certificates and transfer powers, in form and substance satisfactory to the Agent.
 3. By August 31, 2021 (or by such later date as the Agent may determine in its sole discretion), the Credit Parties shall have (a) caused Amphastar France Pharmaceuticals S.A.S., a company organized under the laws of France ("Amph France"), to become a Guarantor under the Loan Documents and, subject to the terms of the Credit Agreement and the Collateral Documents, grant a security interest in substantially all of its assets, (b) executed and delivered to the Agent such joinder agreement, security documents, corporate documents, certificates and resolutions, French Collateral Documents (including, without limitation, a securities account pledge agreement and related statement of pledge, a pledge of business, a pledge of bank accounts, a pledge of inventory and a pledge of intellectual property rights with respect to the Patents registered in France), legal opinions, insurance certificates and policies in accordance with Section 5.6 of the Credit Agreement and all other documents, certificates, agreements and instruments, in each case, as reasonably requested by the Agent and in form and substance reasonably satisfactory to the Agent and (c) taken all other actions as reasonably required by the Agent in accordance with Section 5.13 of the Credit Agreement and the Collateral Documents.
 4. Within thirty (30) days after the Closing Date (or such longer period as the Agent may determine in its sole discretion), (a) the Credit Parties shall have made, or caused to be made, a determination whether the pledge of 100% of the Stock of Amphastar Nanjing Pharmaceuticals, Inc., a corporation organized under the laws of the People's Republic of China, owned by the Credit Parties shall not have any material adverse tax consequence to the Credit Parties, and (b) to the extent the Credit Parties shall have determined that such pledge shall not have material adverse tax consequences to the Credit Parties, the Credit Parties shall have complied with Section 8.6(b) of the Guaranty and Security Agreement.
 5. Within sixty (60) days after the Closing Date (or such longer period as the Agent may determine in its sole discretion), the Agent shall have received additional insured, lender's loss payable and notice of cancellation endorsements, as applicable, for all policies on real and personal Property of the Credit Parties, as required under and in accordance with Section 5.6 of the Credit Agreement.
-

6. Within sixty (60) days after the Closing Date (or such longer period as the Agent may determine in its sole discretion), the Agent shall have received duly executed copies of Control Agreements in form and substance reasonably satisfactory to the Agent with respect to all securities accounts in which Cash Equivalents are deposited as of such date, in accordance with, and subject to the exclusions set forth in, Section 5.10 of the Guaranty and Security Agreement.
 7. Within ninety (90) days after the Closing Date (or such longer period as the Agent may determine in its sole discretion), the Agent shall have received duly executed copies of all Control Agreements in form and substance reasonably satisfactory to the Agent with respect to all deposit, securities, commodity or similar accounts maintained by each Credit Party (other than Excluded Accounts) as of such date in accordance with Section 5.11 of the Credit Agreement.
 8. Within ninety (90) days after the Closing Date (or such longer period as the Agent may determine in its sole discretion), the Credit Parties shall have delivered to the Agent for the Real Estate of the Credit Parties (other than Excluded Real Estate and any Real Estate with a fair market value less than \$2,000,000), a fully executed Mortgage, together with (A) a fully paid title insurance commitment issued by a title company reasonably acceptable to Agent, insuring that such Mortgage is a valid first priority lien on the Credit Parties' interest in the real property described in such Mortgage (subject only to Permitted Liens) in such amounts and containing such endorsements and affirmative insurance as the Agent may reasonably require, (B) all affidavits, indemnities and other instruments reasonably required in connection with the issuance of such title insurance policy, and (C) true copies of any other agreements, documents, certificates, instruments, local counsel opinions, title policies, surveys certified to the title company, the Agent and each of their successors and assigns and prepared by a professional and properly licensed land surveyor reasonably acceptable to Agent (or "no change" survey affidavits in lieu thereof), certificate of occupancy, estoppel certificate or subordination and non-disturbance agreement, as applicable, certificates with respect to Flood Insurance and all such other documents and information required by and in compliance with the Flood Insurance Requirements and such other deliverables as may be reasonably requested by the Agent and otherwise in accordance and as required under Sections 5.6 and 5.13 of the Credit Agreement, in each case, in form and substance reasonably satisfactory to the Agent.
-

Schedule 6.1
Liens

Liens encumbering the "Specified Real Property" (as defined in that certain Consent and Omnibus Amendment to Loan Documents, dated as of the Closing Date, between Amphastar and East West Bank) in connection with the EWB Mortgage Debt incurred under the EWB Mortgage Documents.

Schedule 6.4
Investments

The Borrower maintains a brokerage account with Oppenheimer & Co (account No. ***-*****). See attached for a summary of the investments maintained in the foregoing account. The "MMFUND" referenced in the attached summary refers to a money market fund, and each "MUNI" referenced in the attached summary refers to a municipal bond.

Schedule 6.5
Indebtedness

Indebtedness of Amphastar France Pharmaceuticals S.A.S incurred under that certain financial loans dated 2009 and 2012 entered into between *l'Agence de l'Eau de Seine Normandie* and Diosynth, such financial loans being transferred to Amphastar Pharmaceuticals S.A.S due to the purchase of the ongoing business of Diosynth by Amphastar Pharmaceuticals S.A.S on April 30, 2014.

The EWB Mortgage Debt

EXHIBIT 1.1(a)
TO

CREDIT AGREEMENT
FORM OF ASSIGNMENT

This ASSIGNMENT (this “**Assignment**”), dated as of the Effective Date, is entered into between

_____ (the “**Assignor**”) and _____ (the “**Assignee**”).

The parties hereto hereby agree as follows:

Borrowers: AMPHASTAR PHARMACEUTICALS, INC., a Delaware corporation (“**Borrower Representative**”, and together with each other entity that from time to time becomes a borrower under the Credit Agreement defined below, collectively the “**Borrowers**”)

Agent: Capital One, National Association, as administrative agent for the Lenders and L/C Issuers (in such capacity and together with its successors and permitted assigns, “**Agent**”)

Credit Agreement: Credit Agreement, dated as of August 4, 2021, among the Borrowers, Amphastar Pharmaceuticals, Inc., as Borrower Representative, the other Credit Parties party thereto, the Lenders and L/C Issuers party thereto and Agent (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; capitalized terms used herein without definition are used as defined in the Credit Agreement)

[Trade Date: _____, _____]¹

Effective Date: _____, _____²

¹ Insert for informational purposes only if needed to determine other arrangements between the Assignor and the Assignee.

² To be filled out by Agent upon entry in the Register.

Loan/ Commitment Assigned ³	Aggregate amount of Commitments or principal amount of Loans for all Lenders ⁴	Aggregate amount of Commitments ⁴ or principal amount of Loans Assigned ⁵	Percentage Assigned ⁶
	\$	\$. %
	\$	\$. %
	\$	\$. %

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- 3 Fill in the appropriate defined term for the type of Loans and/or Commitment under the Credit Agreement that are being assigned under this Assignment. (e.g., “Revolving Loan Commitment” (if permitted), “Term Loan”, etc.).
 - 4 In the case of the Revolving Loan Commitment, including Revolving Loans and interests, participations and obligations to participate in Letter of Credit Obligations and Swing Loans.
 - 5 Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date. The aggregate amounts are inserted for informational purposes only to help in calculating the percentages assigned which, themselves, are for informational purposes only.
 - 6 Set forth, to at least 9 decimals, the Assigned Interest as a percentage of the aggregate Commitment or Loans. This percentage is set forth for informational purposes only and is not intended to be binding. The assignments are based on the amounts assigned not on the percentages listed in this column.
-

Section 1. Assignment. Assignor hereby sells and assigns to Assignee, and Assignee hereby purchases and assumes from Assignor, Assignor's rights and obligations in its capacity as Lender under the Credit Agreement (including Liabilities owing to or by Assignor thereunder) and the other Loan Documents, in each case to the extent related to the amounts identified above (the "**Assigned Interest**").

Section 2. Representations, Warranties and Covenants of Assignor. Assignor:

(a) represents and warrants to Assignee and Agent that (i) it has full power and authority, and has taken all actions necessary for it, to execute and deliver this Assignment and to consummate the transactions contemplated hereby, (ii) it is the legal and beneficial owner of its Assigned Interest and that such Assigned Interest is free and clear of any Lien and other adverse claims and (iii) by executing, signing and delivering this Assignment via ClearPar® or any other electronic settlement system designated by Agent, the Person signing, executing and delivering this Assignment on behalf of the Assignor is an authorized signer for the Assignor and is authorized to execute, sign and deliver this Assignment;

(b) makes no other representation or warranty and assumes no responsibility, including with respect to the aggregate amount of the Loans and Commitments, the percentage of the Loans and Commitments represented by the amounts assigned, any statements, representations and warranties made in or in connection with any Loan Document or any other document or information furnished pursuant thereto, the execution, legality, validity, enforceability or genuineness of any Loan Document or any document or information provided in connection therewith and the existence, nature or value of any Collateral; and

(c) assumes no responsibility (and makes no representation or warranty) with respect to the financial condition of any Credit Party or the performance or nonperformance by any Credit Party of any obligation under any Loan Document or any document provided in connection therewith.

Section 3. Representations, Warranties and Covenants of Assignees. Assignee:

(a) represents and warrants to Assignor and Agent that (i) it has full power and authority, and has taken all actions necessary for Assignee, to execute and deliver this Assignment and to consummate the transactions contemplated hereby, (ii) except for obtaining the consents, if any, required under the Credit Agreement, it meets all the requirements and is otherwise a Person eligible to be (and not disqualified from being) an assignee under Section 10.9 of the Credit Agreement, (iii) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest assigned to it hereunder and either Assignee or the Person exercising discretion in making the decision for such assignment is experienced in acquiring assets of such type, (iv) by executing, signing and delivering this Assignment via ClearPar® or any other electronic settlement system designated by Agent, the Person signing, executing and delivering this Assignment on behalf of the Assignee is an authorized signer for the Assignee and is authorized to execute, sign and deliver this Assignment, (v) the representations and warranties required to be made by it under the Credit Agreement are true, correct and complete and (vi) it is not a Disqualified Institution;

(b) irrevocably appoints and authorizes Agent to take such action as administrative agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Agent by the terms thereof, together with such powers as are reasonably incidental thereto;

(c) shall perform in accordance with their terms all obligations that, by the terms of the Loan Documents, are required to be performed by it as a Lender;

(d) confirms it has received such documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and shall continue to make its own credit decisions in taking or not taking any action under any Loan Document independently and without reliance upon Agent, any L/C Issuer, any Lender or any other Indemnitee and based on such documents and information as it shall deem appropriate at the time;

(e) acknowledges and agrees that, as a Lender, it may receive material non-public information and confidential information concerning the Credit Parties and their Affiliates and their Stock and agrees to use such information in accordance with Section 10.10 of the Credit Agreement;

(f) specifies as its applicable Lending Offices (and addresses for notices) the offices at the addresses set forth beneath its name on the signature pages hereof;

(g) shall pay to Agent an assignment fee in the amount of \$3,500 to the extent such fee is required to be paid under Section 10.9 of the Credit Agreement;

(h) attaches all documentation required to be delivered by it pursuant to Section 10.1(g) of the Credit Agreement, duly completed and executed by Assignee; and

(i) agrees to execute and deliver to Agent any document or instrument reasonably requested by Agent to effect any of the foregoing.

Section 4. Determination of Effective Date; Register. Following the due execution and delivery of this Assignment by Assignor, Assignee and, to the extent required by Section 10.9 of the Credit Agreement, the Borrowers and/or each L/C Issuer that is a Lender, this Assignment (including its attachments) will be delivered to Agent for its acceptance and recording in the Register. The effective date of this Assignment (the “**Effective Date**”) shall be the later of (i) the acceptance of this Assignment by Agent and (ii) the recording of this Assignment in the Register. Agent shall insert the Effective Date when known in the space provided therefor at the beginning of this Assignment.

Section 5. Effect. As of the Effective Date, (a) Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and the Credit Agreement, have the rights and obligations of a Lender under the Credit Agreement and (b) Assignor shall, to the extent provided in this Assignment, relinquish its rights (except those surviving the termination of the Commitments and payment in full of the Obligations) and be released from its obligations under the Loan Documents other than those obligations relating to events and circumstances occurring prior to the Effective Date.

Section 6. Distribution of Payments. On and after the Effective Date, Agent shall make all payments under the Loan Documents in respect of the Assigned Interest (a) in the case of amounts accrued to but excluding the Effective Date, to Assignor and (b) otherwise, to Assignee.

Section 7. Miscellaneous.

(a) The parties hereto, to the extent permitted by law, waive all right to trial by jury in any action, suit, or proceeding arising out of, in connection with or relating to, this Assignment and any other transaction contemplated hereby. This waiver applies to any action, suit or proceeding whether sounding in tort, contract or otherwise.

(b) On and after the Effective Date, this Assignment shall be binding upon, and inure to the benefit of, the Assignor, Assignee, Agent and their Related Persons and their successors and assigns.

(c) This Assignment shall be governed by, and be construed and interpreted in accordance with, the law of the State of New York.

(d) This Assignment may be executed in any number of counterparts and by different parties 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.

(e) Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Assignment by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart of this Assignment.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

[NAME OF ASSIGNOR]
as Assignor

By: _____
Name:
Title:

[NAME OF ASSIGNEE]
as Assignor

By: _____
Name:
Title:

Lending Office for LIBOR Rate Loans:

[Insert Address (including contact name, fax number and e-mail address)]

Lending Office (and address for notices) for any other purpose:

Insert Address (including contact name, fax number and e-mail address)]

ACCEPTED and AGREED
This__ day of____, 20__ :

CAPITAL ONE, NATIONAL ASSOCIATION
as Agent

By: _____
Name:
Title:

[AMPHASTAR PHARMACEUTICALS, INC.,
as Borrower Representative]⁷

By: _____
Name:
Title:

[NAME OF L/C ISSUER]⁸

By: _____
Name:
Title:

7 Include only if required pursuant to Section 10.9 of the Credit Agreement.
8 Include only if required pursuant to Section 10.9 of the Credit Agreement.

[SIGNATURE PAGE FOR ASSIGNMENT FOR AMPHASTAR'S CREDIT AGREEMENT]

EXHIBIT 1.1(b)
TO

CREDIT AGREEMENT

FORM OF NOTICE OF BORROWING

CAPITAL ONE, NATIONAL ASSOCIATION,
as Agent under the Credit Agreement referred to below

Attention:

Re: AMPHASTAR PHARMACEUTICALS, INC., a Delaware corporation (“**Borrower Representative**”, and together with each other entity that from time to time becomes a borrower under the Credit Agreement defined below, collectively the “**Borrowers**”).

Reference is made to the Credit Agreement, dated as of August 4, 2021 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among the Borrowers, Amphastar Pharmaceuticals, Inc., as Borrower Representative, the other Credit Parties, the Lenders and L/C Issuers party thereto and Capital One, National Association, as administrative agent for such Lenders and L/C Issuers. Capitalized terms used herein without definition are used as defined in the Credit Agreement.

The Borrower Representative, on behalf of Borrowers, hereby gives you irrevocable notice, pursuant to Section 2.5 of the Credit Agreement of its request of a Borrowing (the “**Proposed Borrowing**”) under the Credit Agreement and, in that connection, sets forth the following information

- A. The date of the Proposed Borrowing is _____ (the “**Funding Date**”).
- B. The aggregate principal amount of requested Revolving Loans is \$_____, of which \$_____ consists of Base Rate Loans and \$_____ consists of LIBOR Rate Loans having an initial Interest Period of _____ months.
- C. The aggregate principal amount of Term Loans is \$_____, of which \$_____ consists of Base Rate Loans and \$_____ consists of LIBOR Rate Loans having an initial Interest Period of _____ months.⁹

The undersigned hereby certifies that, except as set forth on Schedule A attached hereto, the following statements are true on the date hereof and will be true on the Funding Date, both before and after giving effect to the Proposed Borrowing and any other Loan to be made or Letter of Credit to be Issued on or before the Funding Date:

- (i) the representations and warranties set forth in the Credit Agreement and elsewhere in the Loan Documents are true and correct in all material respects (without duplication of any materiality qualifier contained therein), except to the extent such

⁹ For Term Loans, must be the Closing Date.

representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such date;

(ii) no Default or Event of Default has occurred and is continuing or would reasonably be expected to result after giving effect to the Proposed Borrowing; and

(iii) the aggregate outstanding amount of Revolving Loans does not exceed the Maximum Revolving Loan Balance.

AMPHASTAR PHARMACEUTICALS, INC.,
as the Borrower Representative

By:

Name:

Title:

EXHIBIT 1.1(c)
TO

CREDIT AGREEMENT

FORM OF [REVOLVING][SWINGLINE][TERM] NOTE

[Swing] Lender: [NAME OF [SWING] LENDER]
Principal Amount: \$ _____

New York, New York
, 20

FOR VALUE RECEIVED, the undersigned, AMPHASTAR PHARMACEUTICALS, INC., a Delaware corporation (together with each other entity that from time to time becomes a borrower under the Credit Agreement defined below, collectively the “**Borrowers**”), hereby jointly and severally promise to pay to the order of the [Swing] Lender set forth above (the “[**Swing Lender**”]) the Principal Amount set forth above, or, if less, the aggregate unpaid principal amount of all [Revolving][Swing][Term] Loans (as defined in the Credit Agreement referred to below) of the [Swing] Lender to the Borrowers, payable at such times and in such amounts as are specified in the Credit Agreement.

The Borrowers jointly and severally promise to pay interest on the unpaid principal amount of the [Revolving][Swing][Term] Loans from the date made until such principal amount is paid in full, payable at such times and at such interest rates as are specified in the Credit Agreement. Demand, diligence, presentment, protest and notice of non-payment and protest are hereby waived by the Borrowers.

Both principal and interest are payable in Dollars to Capital One, National Association, as Agent, at the address set forth in the Credit Agreement, in immediately available funds.

This Note is one of the Notes referred to in, and is entitled to the benefits of, the Credit Agreement, dated as of August 4, 2021 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among the Borrowers, AMPHASTAR PHARMACEUTICALS, INC., as Borrower Representative, the other Credit Parties party thereto, the Lenders, the L/C Issuers party thereto, the Swing Lender and Capital One, National Association, as administrative agent for the Lenders and L/C Issuers. Capitalized terms used herein without definition are used as defined in the Credit Agreement.

The Credit Agreement, among other things, (a) provides for the making of [Revolving][Swing][Term] Loans by the [Swing] Lender to the Borrowers in an aggregate amount not to exceed at any time outstanding the Principal Amount set forth above, the indebtedness of the Borrowers resulting from such [Revolving][Swing][Term] Loans being evidenced by this Note and (b) contains provisions for acceleration of the maturity of the unpaid principal amount of this Note upon the happening of certain stated events and also for prepayments on account of the principal hereof prior to the maturity hereof upon the terms and conditions specified therein.

This Note is a Loan Document, is entitled to the benefits of the Loan Documents and is subject to certain provisions of the Credit Agreement, including Sections 1.2 (Other Interpretive Provisions), 10.16(b) (Submission to Jurisdiction), 10.17 (Waiver of Jury Trial) and 10.21 (Joint and Several) thereof.

This Note is a registered obligation, transferable only upon notation in the Register, and no assignment hereof shall be effective until recorded therein.

The laws of the State of New York shall govern all matters arising out of, in connection with or relating to this Note, including its validity, interpretation, construction, performance and enforcement (including any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each Borrower has caused this Note to be executed and delivered by its duly authorized officer as of the day and year and at the place set forth above.

AMPHASTAR PHARMACEUTICALS, INC.,

By: _____
Name:
Title:

[\$___] [REVOLVING][TERM][SWINGLINE] NOTE OF AMPHASTAR PHARMACEUTICALS, INC. FOR THE BENEFIT OF [NAME OF LENDER]

EXHIBIT 2.1(c)
TO

CREDIT AGREEMENT

FORM OF L/C REQUEST

[NAME OF L/C ISSUER], as L/C Issuer under the Credit Agreement referred to below

Attention:

_____, 20____

Re: AMPHASTAR PHARMACEUTICALS, INC., a Delaware corporation (together with each other entity that from time to time becomes a borrower under the Credit Agreement defined below, collectively the “**Borrowers**”)

Reference is made to the Credit Agreement, dated as of August 4, 2021 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among the Borrowers, AMPHASTAR PHARMACEUTICALS, INC., as Borrower Representative, the other Credit Parties party thereto, the Lenders and L/C Issuers party thereto and Capital One, National Association, as administrative agent for the Lenders and L/C Issuers. Capitalized terms used herein without definition are used as defined in the Credit Agreement.

The Borrower Representative, on behalf of the Borrowers, hereby gives you notice, irrevocably, pursuant to Section 2.1(c) of the Credit Agreement, of its request for your Issuance of a Letter of Credit, in the form attached hereto, for the benefit of [Name of Beneficiary], in the amount of \$_____, to be issued on_____,_____ (the “**Issue Date**”) with an expiration date of_____.

The undersigned hereby certifies that, except as set forth on Schedule A attached hereto, the following statements are true on the date hereof and will be true on the Issue Date, both before and after giving effect to the Issuance of the Letter of Credit requested above and any Loan to be made or any other Letter of Credit to be Issued on or before the Issue Date:

- (i) the representations and warranties set forth in the Credit Agreement and elsewhere in the Loan Documents are true and correct in all material respects (without duplication of any materiality qualifier contained therein), except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such date;
- (ii) no Default or Event of Default has occurred and is continuing or would reasonably be expected to result after giving effect to the incurrence of such Letter of Credit Obligation; and
- (iii) the aggregate outstanding amount of Revolving Loans does not exceed the Maximum Revolving Loan Balance.

AMPHASTAR PHARMACEUTICALS, INC.,
as the Borrower Representative

By: _____

Name:

Title:

[SIGNATURE PAGE TO L/C REQUEST DATED __, __]

EXHIBIT 2.1(d)
TO

CREDIT AGREEMENT

FORM OF SWINGLINE REQUEST

CAPITAL ONE, NATIONAL ASSOCIATION,
as Agent under the Credit Agreement referred to below Two Bethesda Metro Center, Suite 600
Bethesda, Maryland 20814
Attn: Portfolio Manager – _____

Re: AMPHASTAR PHARMACEUTICALS, INC., a Delaware corporation (“**Borrower Representative**”, and together with each other entity that from time to time becomes a borrower under the Credit Agreement defined below, collectively the “**Borrowers**”)

Reference is made to the Credit Agreement, dated as of August 4, 2021 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among the Borrowers, AMPHASTAR PHARMACEUTICALS, INC., as Borrower Representative the other Credit Parties party thereto, the Lenders, L/C Issuers party thereto and Capital One, National Association, as agent for the Lenders. Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement.

The Borrower Representative, on behalf of Borrowers, hereby gives you irrevocable notice pursuant to Section 2.1(d) of the Credit Agreement that it requests Swing Loans under the Credit Agreement (the “**Proposed Advance**”) and, in connection therewith, sets for the following information:

- A. The date of the Proposed Advance is _____ (the “**Funding Date**”).
- B. The aggregate principal amount of Proposed Advance is \$_____.

The undersigned hereby certifies that, except as set forth on Schedule A attached hereto, the following statements are true on the date hereof both before and after giving effect to the Proposed Advance and any other Loan to be made or Letter of Credit to be issued on or before the Funding Date:

- (i) the representations and warranties set forth in the Credit Agreement and elsewhere in the Loan Documents are true and correct in all material respects (without duplication of any materiality qualifier contained therein) with the same effect as though made on and as of such Funding Date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such date;
 - (ii) the aggregate principal amount of all Revolving Loans does not exceed the Maximum Revolving Loan Balance;
and
 - (iii) no Default or Event of Default has occurred and is continuing or would reasonably be expected to result after giving effect to the Proposed Advance.
-

Sincerely,
AMPHASTAR PHARMACEUTICALS, INC.,
a Delaware corporation, as the Borrower Representative

By: _____
Name: _____
Title: _____

EXHIBIT 2.6
TO
CREDIT AGREEMENT

FORM OF NOTICE OF CONVERSION/CONTINUATION

CAPITAL ONE, NATIONAL ASSOCIATION,
as Agent under the Credit Agreement referred to below

Attention: _____

Re: AMPHASTAR PHARMACEUTICALS, INC., a Delaware corporation (“**Borrower Representative**” and together with each other entity that from time to time becomes a borrower under the Credit Agreement defined below, collectively the “**Borrowers**”)

Reference is made to the Credit Agreement, dated as of August 4, 2021 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among the Borrowers, AMPHASTAR PHARMACEUTICALS, INC., as Borrower Representative, the other Credit Parties party thereto, the Lenders and L/C Issuers party thereto and Capital One, National Association, as administrative agent for the Lenders and L/C Issuers. Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Credit Agreement.

The Borrower Representative, on behalf of Borrowers, hereby gives you irrevocable notice, pursuant to Section 2.6 of the Credit Agreement of its request for the following:

- (i) a continuation, on____,____, as LIBOR Rate Loans having an Interest Period of____months of [Term Loans] [Revolving Loans] in an aggregate outstanding principal amount of \$_____ having an Interest Period ending on the proposed date for such continuation;
- (ii) a conversion, on____,____, to LIBOR Rate Loans having an Interest Period of____ months of [Term Loans] [Revolving Loans] in an aggregate outstanding principal amount of \$____; and
- (iii) a conversion, on____,____, to Base Rate Loans, of [Term Loans] [Revolving Loans] in an aggregate outstanding principal amount of \$_____.

In connection herewith, the undersigned hereby certifies that, except as set forth on Schedule A attached hereto, no Default or Event of Default has occurred and is continuing on the date hereof, both before and after giving effect to any Loan to be made or Letter of Credit to be Issued on or before any date for any proposed conversion or continuation set forth above.

AMPHASTAR PHARMACEUTICALS, INC.,
a Delaware corporation, as the Borrower Representative

By: _____
Name: _____
Title: _____

EXHIBIT 3.1
TO

CREDIT AGREEMENT

CLOSING CHECKLIST

[See attached.]

EXHIBIT 3.1

CREDIT AGREEMENT

Dated as of August 4, 2021

by and among

AMPHASTAR PHARMACEUTICALS, INC.,
TOGETHER WITH THE OTHER PERSONS
THAT ARE NOW OR FROM TIME TO TIME

BECOME BORROWERS THEREUNDER, as Borrowers,

THE OTHER PERSONS PARTY THERETO
DESIGNATED FROM TIME TO TIME AS CREDIT PARTIES,

CAPITAL ONE, NATIONAL ASSOCIATION,
for itself, as a Lender and Swing Lender and as Agent for all Lenders,

THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO

as Lenders,
and

CAPITAL ONE, NATIONAL ASSOCIATION,

as Sole Lead Arranger and Bookrunner

Set forth below is a Closing Checklist, which lists documents and information delivered in connection with the Credit Agreement (“Credit Agreement”) listed herein as Document No. 1, the other Loan Documents and the transactions contemplated thereunder. Each capitalized term used but not defined herein shall have the meaning ascribed to such term in the Credit Agreement and all section references herein are to Sections of the Credit Agreement, unless otherwise indicated. All documents are dated as of August , 2021 unless otherwise indicated.

I. PARTIES

- A. **Agent** — Capital One, as Agent
- B. **Borrower** — Amphastar Pharmaceuticals, Inc., a Delaware corporation
- C. **Capital One** — Capital One, National Association, a national banking association
- D. **Guarantors** — International Medication Systems, Limited, a Delaware corporation, and Armstrong Pharmaceuticals, Inc., a Delaware corporation (collectively with Borrower, the “Credit Parties”)

II. COUNSEL TO PARTIES

- A. **K&S** — King & Spalding LLP, counsel to Agent
 - B. **CTCP** — Nixon Peabody LLP, counsel to Credit Parties
-

Action or Document	Responsibility	Executed by
1. Credit Agreement	K&S	<input type="checkbox"/> Credit Parties <input type="checkbox"/> Agent Lenders
Schedules to Credit Agreement		
(i) <u>Schedule 1.1</u> – Prior Indebtedness	K&S	N/A
(ii) <u>Schedule 2.1(a)</u> – Initial Term Loan Commitments	K&S	N/A
(iii) <u>Schedule 2.1(b)</u> – Revolving Loan Commitments	K&S	N/A
(iv) <u>Schedule 4.5</u> – Litigation	Credit Parties	N/A
(v) <u>Schedule 4.7</u> – ERISA	Credit Parties	N/A
(vi) <u>Schedule 4.8</u> – Margin Stock	Credit Parties	N/A
(vii) <u>Schedule 4.9</u> – Real Estate	Credit Parties	N/A
(viii) <u>Schedule 4.12</u> – Environmental	Credit Parties	N/A
(ix) <u>Schedule 4.15</u> – Labor Relations	Credit Parties	N/A
(x) <u>Schedule 4.17</u> – Brokers’ and Transaction Fees	Credit Parties	N/A
(xi) <u>Schedule 4.18</u> – Ventures, Subsidiaries and Affiliates; Outstanding Stock	Credit Parties	N/A
(xii) <u>Schedule 4.19(a)</u> – Jurisdiction of Organization; Chief Executive Office	Credit Parties	N/A
(xiii) <u>Schedule 4.20</u> – Deposit Accounts and Other Accounts	Credit Parties	N/A
(xiv) <u>Schedule 4.23</u> – Regulatory Matters	Credit Parties	N/A
(xv) <u>Schedule 6.1</u> – Liens	Credit Parties	N/A
(xvi) <u>Schedule 6.4</u> – Investments	Credit Parties	N/A
(xvii) <u>Schedule 6.5</u> – Indebtedness	Credit Parties	N/A
Exhibits to Credit Agreement		
(i) <u>Exhibit 1.1(a)</u> – Form of Assignment	K&S	N/A

Action or Document	Responsibility	Executed by
(ii) <u>Exhibit 1.1(b)</u> – Form of Notice of Borrowing	K&S	N/A
(iii) <u>Exhibit 1.1(c)</u> – Form of Note	K&S	N/A
(iv) <u>Exhibit 2.1(c)</u> – Form of L/C Request	K&S	N/A
(v) <u>Exhibit 2.1(d)</u> – Form of Swing Loan Request	K&S	N/A
(vi) <u>Exhibit 2.6</u> – Form of Notice of Conversion/Continuation	K&S	N/A
(vii) <u>Exhibit 3.1</u> – Closing Checklist	K&S	N/A
(viii) <u>Exhibit 5.2(b)</u> – Form of Compliance Certificate	K&S	N/A
2. Term Note issued to:	K&S	
a. East West Bank	K&S	<input type="checkbox"/> Borrower
b. Cathay Bank	K&S	<input type="checkbox"/> Borrower
3. Revolving Note issued to:	K&S	
a. East West Bank	K&S	<input type="checkbox"/> Borrower
b. Cathay Bank	K&S	<input type="checkbox"/> Borrower
4. Agent Fee Letter	K&S	<input type="checkbox"/> Borrower <input type="checkbox"/> Agent
5. Arranger Fee Letter	K&S	<input type="checkbox"/> Borrower <input type="checkbox"/> Agent <input type="checkbox"/> East West Bank
6. Master Agreement for Standby Letters of Credit	K&S	<input type="checkbox"/> Agent <input type="checkbox"/> Credit Parties
7. Master Agreement for Documentary Letters of Credit	K&S	<input type="checkbox"/> Agent <input type="checkbox"/> Credit Parties
8. Master Intercompany Note	K&S	<input type="checkbox"/> Credit Parties
a) Endorsement to Master Intercompany Note	K&S	<input type="checkbox"/> Credit Parties
9. Guaranty and Security Agreement	K&S	<input type="checkbox"/> Borrower <input type="checkbox"/> Guarantors <input type="checkbox"/> Agent
Annexes to GSA		
<u>Annex 1</u> – Form of Pledge Amendment	K&S	N/A

Action or Document	Responsibility	Executed by
<u>Annex 2</u> – Form of Joinder Agreement	K&S	N/A
<u>Annex 2</u> – Form of Intellectual Property Security Agreement	K&S	N/A
Schedules to GSA		
<u>Schedule 1</u> – Commercial Tort Claims	Credit Parties	N/A
<u>Schedule 2</u> – Filings	Credit Parties	N/A
<u>Schedule 3</u> – Location of Inventory and Equipment	Credit Parties	N/A
<u>Schedule 4</u> – Pledged Collateral	Credit Parties	N/A
<u>Schedule 5</u> – Intellectual Property	Credit Parties	N/A
10. Trademark Security Agreement	K&S	<input type="checkbox"/> Agent <input type="checkbox"/> Borrower Representative
11. Patent Security Agreement	K&S	<input type="checkbox"/> Agent <input type="checkbox"/> Borrower Representative
12. Perfection Certificate	K&S (form) Credit Parties	<input type="checkbox"/> Borrower
13. UCC searches with respect to the Credit Parties	K&S (U.S.)	N/A
14. U.S. IP searches with respect to the Credit Parties	K&S (U.S.)	N/A
15. UCC financing statements naming Agent as Secured Party and each Credit Party as Debtor filed in the jurisdiction of incorporation of such Credit Party	K&S (U.S.)	N/A
16. For Credit Parties, certificates from secretary or assistant secretary of each of the following certifying to (a) articles/certificate of formation, as applicable, and all amendments thereto, certified by the secretary of the state of incorporation, (b) bylaws/operating agreement, as applicable, and all amendments thereto, (c) resolutions and (d) the incumbency and signatures of the officers or representatives executing the Credit Agreement and the other Loan Documents	CTCP	Responsible Officers of the Credit Parties

Action or Document	Responsibility	Executed by
17. Certificates of good standing, foreign qualification to do business (or foreign equivalent thereof) of each Credit Party from the secretary of state of the state of incorporation of such Credit Party	CTCP	N/A
18. Solvency Certificate	K&S	<input type="checkbox"/> Borrower
19. Officer's Closing Certificate	K&S	<input type="checkbox"/> Borrower
<u>Exhibit A</u> – Amendments to EWB Mortgage Documents	CTCP	<input type="checkbox"/> Borrower <input type="checkbox"/> EWB
20. Cathay Bank Payoff Statements and Rider	CTCP	<input type="checkbox"/> Cathay Bank
21. UCC-3 Terminations of each UCC-1 Financing Statement in favor of East West Bank and Cathay Bank	CTCP	N/A
22. Termination of Security Interest in Intellectual Property	CTCP	<input type="checkbox"/> East West Bank
23. Mortgage Terminations from East West Bank	CTCP	<input type="checkbox"/> East West Bank <input type="checkbox"/> Notary
24. Opinion of CTCP (NY & DE)	CTCP	<input type="checkbox"/> CTCP
25. Notice of Borrowing	CTCP	<input type="checkbox"/> Borrower
26. Letter of Direction	K&S	<input type="checkbox"/> Borrower
<u>Exhibit A</u> – Flow of Funds	CTCP / Credit Parties	N/A
27. Completed W-9 form for each party listed on Flow of Funds/Letter of Direction	Credit Parties	N/A
28. Certificates of Insurance	CTCP	N/A
29. Financial Statements	Credit Parties	N/A
30. KYC	Credit Parties	N/A
a) Recent W-8 / W-9 Forms	Credit Parties / CTCP	<input type="checkbox"/> Credit Parties
b) The SS-4 or IRS Letter or IRS.Gov site verification of the TIN# (any one of these is fine) for each Borrower entity		N/A
c) Charter Documents	Credit Parties / CTCP	N/A

<u>Action or Document</u>	<u>Responsibility</u>	<u>Executed by</u>
d) Bylaws / Operating Agreements	Credit Parties / CTCP	N/A
e) Good Standing Certificates	Credit Parties / CTCP	N/A
f) Complete PF Organizational Chart (with percentage ownership included)	Credit Parties / CTCP	N/A
g) Designation of a Key Executive for AML/KYC - Provide the full legal name for a Key Executive at the Company (someone authorized to sign on behalf of the company)	Credit Parties / CTCP	N/A
h) Borrower Admin Detail Form	Credit Parties / CTCP	<input type="checkbox"/> Officer of Borrower Representative
31. Corporate Due Diligence Request List	K&S (form) Credit Parties	N/A

EXHIBIT 5.2(b)
TO

CREDIT AGREEMENT

COMPLIANCE CERTIFICATE AMPHASTAR PHARMACEUTICALS, INC.

Date: ____, 20__

This Compliance Certificate (this “**Certificate**”) is given by AMPHASTAR PHARMACEUTICALS, INC., a Delaware corporation (“**Borrower Representative**”, and together with each other entity that from time to time becomes a borrower under the Credit Agreement defined below, collectively the “**Borrowers**”), the other Credit Parties party thereto, Capital One, National Association, as administrative agent (in such capacity, “**Agent**”), and as a Lender, and the additional Lenders party thereto (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The officer executing this Certificate is a Responsible Officer of Borrower Representative and as such is duly authorized to execute and deliver this Certificate on behalf of the Borrowers. By executing this Certificate, such officer hereby certifies to Agent, the Lenders and the L/C Issuers, on behalf of the Borrowers, that:

(a) the financial statements delivered with this Certificate in accordance with Section 5.1(a) and/or 5.1(b) of the Credit Agreement are correct and complete and fairly present, in all material respects, in accordance with GAAP the financial position and the results of operations of the Borrower Representative and its Subsidiaries as of the dates of and for the periods covered by such financial statements (subject, in the case of interim financial statements, to normal year-end adjustments and the absence of footnote disclosure);

(b) Annex A hereto includes a correct calculation of Consolidated EBITDA, Consolidated Adjusted EBITDA, Consolidated Cash Flow and Consolidated Net Interest Expense for the relevant periods ended _____, 20 ; Annex B includes a correct calculation of each of the financial covenants contained in Article VII of the Credit Agreement for the relevant periods ended _____, 20 ;

(c) as of _____, 20 , no Credit Party or any Subsidiary of any Credit Party owns any Margin Stock [**except as specified on Annex C attached hereto**];

(d) to the best of such officer’s knowledge, no Default or Event of Default exists or is continuing [**except as specified on Annex C attached hereto**];

(e) based on the Consolidated Total Net Leverage Ratio, the Applicable Margin for (i) Revolving Loans and Term Loans which are Base Rate Loans and Swing Loans is _____, and (ii) Revolving Loans and Term Loans which are LIBOR Rate Loans is _____;] and

(f) since the Closing Date and except as disclosed in prior Certificates delivered to Agent, no Credit Party and no Subsidiary of any Credit Party has:



(i) changed its legal name, identity, jurisdiction of incorporation, organization or formation or organizational structure or formed or acquired any Subsidiary except as follows:___;

(ii) acquired all or substantially all of the assets of, or merged or consolidated with or into, any Person, except as follows:_____; or

(iii) changed its address or otherwise relocated, acquired fee simple title to any real property or entered into any real property leases, except as follows:_____.

IN WITNESS WHEREOF, Borrower Representative has caused this Certificate to be executed by one of its Responsible Officers this ___ day of _____, 20 .

AMPHASTAR PHARMACEUTICALS, INC.,

Name: _____
Title: _____

Note: Unless otherwise specified, all financial covenants are calculated for the Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP. All calculations are without duplication.

Selected Financial Calculations

I. Calculation of Consolidated EBITDA/Consolidated Adjusted EBITDA

Consolidated EBITDA is calculated as follows:

- A. Net income (or loss) for the applicable period of measurement of Amphastar and its Subsidiaries (together with the other Persons whose income or loss is taken into account as provided below in determining Consolidated EBITDA) on a consolidated basis determined in accordance with GAAP, without duplication of any item described below (and the term "duplication" shall include any cash reimbursement for any loss or expense or other item for which an add-back is provided below), to the extent taken into account in the calculation of net income (or loss) for such period. _____
 - (a) less the income (or plus the loss) of any Person which is not a Subsidiary of Amphastar or any of its Subsidiaries, except to the extent of the amount of dividends or other distributions actually paid to Amphastar or any of its Subsidiaries in cash or Cash Equivalents by such Person and the payment of dividends or similar distributions by that Person was not at the time subject to the consent of a third party or prohibited by operation of the terms of its charter or of any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Person _____
 - (b) less the income (or plus the loss) of any Person accrued prior to the date it becomes a Subsidiary of a Borrower or is merged into or consolidated with Amphastar or any of its Subsidiaries or that Person's assets are acquired by Amphastar or any of its Subsidiaries _____
 - (c) less the proceeds of any insurance (other than business interruption insurance) _____
 - (d) less gains (or plus losses) from the sale, exchange, transfer or other disposition of Property not in the ordinary course of business of Amphastar and its Subsidiaries, and related tax effects in accordance with GAAP _____
 - (e) [reserved] _____
 - (f) less income tax refunds received, in excess of income tax liabilities _____
 - (g) less income (or plus the loss) from the early extinguishment of Indebtedness, net of related tax effects _____
- B. Total exclusions from (additions to) net income (sum of (a)-(g) above) _____

Plus, without duplication, to the extent already taken into account in the calculation of net income (or loss) for such period (and the term "duplication" shall include any cash reimbursement for any loss or expense or other item for which an add-back is provided below):

- (1) depreciation and amortization expenses for such period (including amortization of intangible assets) _____
 - (2) Consolidated Net Interest Expense _____
 - (3) all Taxes on or measured by income (excluding income tax refunds) _____
-

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Selected Financial Calculations

- (4) [reserved] _____
 - (5) all non-cash losses and other non-cash charges or reasonable and documented expenses (or minus non-cash income or gain), including non-cash adjustments resulting from the application of purchase accounting, non-cash expenses arising from grants of stock appreciation rights, stock options or restricted stock, non-cash impairment of good will and other long term intangible assets, unrealized non-cash losses (or minus unrealized non-cash gains) under Rate Contracts, unrealized non-cash losses (or minus unrealized non-cash gains) in such period due solely to fluctuations in currency values, but excluding any non-cash loss, charge or expense (a) that is an accrual of a reserve for a cash expenditure or payment to be made, or anticipated to be made, in a future period or (b) relating to a write-down, write off or reserve with respect to accounts receivable or Inventory _____
 - (6) fees and reasonable and documented out-of-pocket expenses incurred in connection with the negotiation, execution and delivery on the Closing Date of the Loan Documents _____
 - (7) fees and reasonable and documented out-of-pocket expenses incurred in connection with any amendments or waivers to the Credit Agreement and the other Loan Documents to the extent such fees and expenses have been disclosed to Agent _____
 - (8) fees and reasonable and documented out-of-pocket expenses incurred in connection with any (i) consummated (w) Permitted Acquisition or other Acquisition or Investment not in the ordinary course of business, (x) Restricted Payment not in the ordinary course of business, (y) Disposition not in the ordinary course of business, or (z) issuance or repayment of Indebtedness, issuance of Stock (including in connection with any registration of securities or exchange offer), refinancing transaction or amendment or modification of any debt instrument, and/or (ii) Event of Loss _____
 - (9) fees and reasonable and documented out-of-pocket expenses (such fees and expenses described in this clause (9), collectively, "Unconsummated Transaction Fees") incurred in connection with any contemplated or proposed (i) Permitted Acquisition or other Acquisition or Investment not in the ordinary course of business, (ii) Restricted Payment not in the ordinary course of business, (iii) Disposition not in the ordinary course of business or (iv) incurrence of Indebtedness or proposed issuance of Stock (including in connection with any registration of securities or exchange offer), refinancing transaction or amendment or modification of any debt instrument, in each instance in the foregoing clauses (i), (ii), (iii) or (iv) which is not consummated and which is permitted under the Credit Agreement, to the extent all such Unconsummated Transaction Fees are certified as such in a certificate of a Responsible Officer of the Borrower Representative to Agent describing such fees and expenses in reasonable detail _____
 - (10) non-recurring or unusual reasonable and documented out-of-pocket expenses including severance costs, lease termination costs, relocation _____
-

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Selected Financial Calculations

costs, restructuring charges, retention or completion bonuses, signing costs and other non-recurring expenses (including any costs, charges, accruals, reserves or expenses incurred during such period attributable to the undertaking and/or implementation of cost savings initiatives or operating expense reductions and similar initiatives, integration, transition, reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, and business optimization costs) not otherwise added back to Consolidated EBITDA (collectively, "Non- Recurring Expenses") in an aggregate amount not to exceed twenty-five percent (25%) of Consolidated EBITDA (calculated after the addback for Non-Recurring Expenses) in the aggregate for any four consecutive Fiscal Quarter period; provided that a Responsible Officer of the Borrower Representative shall have provided a reasonably detailed statement or schedule of such Non-Recurring Expenses

- (11) [reserved] _____
- (12) proceeds of business interruption insurance received in cash to the extent not taken into account in the calculation of net income (or loss) _____
- (13) any reasonable and documented out-of-pocket costs and expenses incurred by a Borrower or its Subsidiaries pursuant to any management equity plan or stock option plan or any management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent such costs or expenses are funded with Net Issuance Proceeds contributed to the capital of Amphastar or Net Issuance Proceeds of an issuance of Stock of Amphastar _____
- (14) non-cash expenses resulting from any employee benefit or management compensation plan or the grant of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs to employees of a Borrower or any Subsidiary of a Borrower pursuant to a written plan or agreement or the treatment of such options under variable plan accounting _____

C. Total add backs to net income (sum of (1)-(14) above): _____

D. Consolidated EBITDA (result of A minus B plus C above) _____

Calculation of Consolidated Adjusted EBITDA

Consolidated Adjusted EBITDA is calculated as follows:

- (1) Consolidated EBITDA _____
- (2) plus, with respect to Targets which are Subsidiaries and owned by Amphastar or any of its Subsidiaries for which Agent has received financial statements pursuant to Section 5.1(b) for less than four (4) Fiscal Quarters, Pro Forma Target EBITDA (which may be a negative number) allocated to each period prior to the acquisition thereof included in the trailing four (4) Fiscal Quarter period for which Consolidated Adjusted EBITDA is being calculated _____



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Selected Financial Calculations

(3) less, with respect to any Disposition consummated within the period in question, Consolidated EBITDA _____
(which may be a negative number) attributable to the Subsidiary, profit centers, or other asset which is
the subject of such Disposition from the beginning of such period until the date of consummation of such
Disposition

Consolidated Adjusted EBITDA (result of (1) plus (2) minus (3) above) _____



Selected Financial Calculations

II. Calculation of Consolidated Cash Flow

Consolidated Cash Flow is calculated as follows:

- (1) Consolidated EBITDA _____
- (2) Consolidated Unfinanced Cash Capital Expenditures _____
- (3) Restricted Payments paid or payable in cash during such period (excluding Restricted Payments constituting Net Stock Repurchases) _____
- (4) Net Stock Repurchases _____
- (5) Contingent Acquisition Consideration paid or payable in cash during such period _____

Consolidated Cash Flow (result of (1), minus the sum of, without duplication, (2) - (5) above) _____

III. Calculation of Consolidated Capital Expenditures

Consolidated Capital Expenditures is calculated as follows:

A. The aggregate of all expenditures and other obligations for the period of measurement which should be capitalized under GAAP less, in each case, to the extent otherwise included any such expenditures financed with: _____

- (a) Net Proceeds from Dispositions _____
- (b) cash proceeds from Stock issuances or capital contributions _____
- (c) Net Proceeds from any Event of Loss to the extent such proceeds are actually applied to replace, repair or reconstruct the damaged Property or Property affected by the condemnation or taking in connection with such Event of Loss _____
- (d) cash proceeds of indemnity payments or third party reimbursements received by Amphastar or any of its Subsidiaries _____
- (e) [reserved] _____
- (f) the trade-in amount of existing equipment solely to the extent that the gross amount of the purchase price of equipment acquired substantially contemporaneously therewith is reduced by such trade-in amount _____

B. Consolidated Capital Expenditures (result of A minus sum of (a)-(f) above)¹⁰ _____

¹⁰ Consolidated Capital Expenditures shall also exclude that portion of the purchase price of a Target in a Permitted Acquisition or other Acquisition permitted under the Credit Agreement that constitutes a capital expenditure under GAAP.

Selected Financial Calculations

IV. Calculation of Consolidated Net Interest Expense

Consolidated Net Interest Expense is calculated as follows:

A. Gross interest expense (including that attributable to Capital Lease Obligations) for such period paid or required to be paid in cash (including all commissions, discounts, fees and other charges in connection with letters of credit and similar instruments and net amounts paid or payable and/or received or receivable under permitted Rate Contracts in respect of interest rates) for Amphastar and its Subsidiaries on a consolidated basis _____

B. Less: Interest income for such period _____

Consolidated Net Interest Expense (result of A minus B above) _____

V. Calculation of Consolidated Fixed Charges

Consolidated Fixed Charges is calculated as follows:

A. For Amphastar and its Subsidiaries, for such period, the sum of: _____

(1) Consolidated Net Interest Expense _____

(2) Scheduled principal payments of Indebtedness during such period reduced by prepayments of the Term Loans as permitted by the Loan Documents _____

B. Consolidated Fixed Charges (result of the sum of (1) through (2) above) _____

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Selected Financial Calculations

VI. Calculation of Consolidated Total Indebtedness

Consolidated Total Indebtedness is calculated as follows:

- A. for Amphastar and its Subsidiaries:
 - (1) Consolidated Funded Indebtedness as of the date of measurement _____
 - (2) L/C Reimbursement Obligations as of date of measurement then due and payable _____
 - (3) Contingent Acquisition Consideration (valued in accordance with GAAP) _____
- B. Consolidated Total Indebtedness (sum of, without duplication, (1)-(3) above) _____**



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Selected Financial Calculations

VII. Calculation of Consolidated Total Net Indebtedness

Consolidated Total Net Indebtedness is calculated as follows:

A. Consolidated Total Indebtedness: _____

(1) Unrestricted cash and Cash Equivalents of Amphastar and its Subsidiaries of up to \$25,000,000, with respect to which Agent has a first priority perfected Lien perfected by Control Agreements. _____

B. Consolidated Total Net Indebtedness (result of A minus (1) above) _____

ANNEX D
TO COMPLIANCE CERTIFICATE

Financial Covenants

I. Section 7.1: Consolidated Total Net Leverage Ratio

Consolidated Total Net Leverage Ratio is calculated as follows:

- A. Consolidated Total Net Indebtedness as of the last day of such period _____
- B. Consolidated Adjusted EBITDA for the twelve month period ending on or immediately prior to the date of measurement _____

Consolidated Total Net Leverage Ratio (result of A divided by B above) _____

Permitted maximum Consolidated Total Net Leverage Ratio 2.50:1.00

In Compliance Yes/No

II. Section 7.2: Consolidated Fixed Charge Coverage Ratio¹¹

Consolidated Fixed Charge Coverage Ratio is calculated as follows:

- A. Consolidated Fixed Charge Coverage Ratio shall mean
- (1) Consolidated Cash Flow for such period, less _____
- (2) less for Amphastar and its Subsidiaries all Taxes on or measured by income (excluding income tax refunds) paid or payable in cash with respect to such period _____

B. Net Consolidated Cash Flow (result of 1 minus 2 above) _____

C. Consolidated Fixed Charges for such period _____

Consolidated Fixed Charge Coverage Ratio (result of B divided by C above) _____

Required minimum Consolidated Fixed Charge Coverage Ratio 1.25:1.00

In Compliance Yes/No

¹¹ For purposes of determining the Consolidated Fixed Charge Coverage Ratio for any relevant calculation period including periods prior to the Closing Date, the amounts described in clauses (1) and (2) of the definition of “Consolidated Fixed Charges” shall be equal to (i) the amounts thereof paid or distributed during the period beginning on August 4, 2021 and ending on the last day of the relevant calculation period (the “Actual Period”) multiplied by (ii) a fraction, the numerator of which is 365 and the denominator of which is the number of days in the relevant Actual Period.

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED
BY BRACKETS ([***]), HAS BEEN OMITTED BECAUSE
THE INFORMATION (I) IS NOT MATERIAL AND
(II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

Share Purchase Agreement
股权转让协议

August 19, 2021

2021 8月19日

Share Purchase Agreement

股权转让协议

This Share Purchase Agreement (this “**Agreement**”) is executed on August 19, 2021 by the following parties:

1. **Amphastar Pharmaceuticals, Inc.**, is a company established and existing in accordance with the laws of the State of Delaware, the United States of America (“**Party A**” or “**AMPH**”), which is the majority shareholder of Amphastar Nanjing Pharmaceuticals, Inc. (“**ANP**”);
2. **Nanjing Qianqia Enterprise Management Consulting (LLP)**, a limited liability partnership established and existing in accordance with the laws of the PRC, with unified social credit code ***** (“**Party B**” or “**QQ**”).

Party A, Party B are herein referred to as the “**Parties**” collectively, and a “**Party**” individually, according to the requirements of the context.

本股权转让协议(“**本协议**”)由以下双方于2021年8月19日签订:

1. **Amphastar Pharmaceuticals, Inc.**, 一家依据美国特拉华州法律设立并有效存续的公司(“**甲方**”或“**AMPH**”), 该公司是美药星(南京)制药有限公司(“**美药星**”)的主要股东;
2. **南京谦洽企业管理咨询中心(有限合伙)**, 一家依据中华人民共和国法律设立并有效存续的有限合伙企业, 统一社会信用代码为***** (“**乙方**”或“**谦洽**”)。

视文义要求, 以上甲方和乙方合称为“**双方**”, 其中每一方或任何一方则称为“**一方**”。

Whereas:

1. As of the date hereof (the “**Execution Date**”), the capitalization structure of ANP is as follows:

Shareholders	Equity Percentage	Registered Capital (USD)
Party A (AMPH)	84.82%	79,564,007
Party B (QQ)	15.18%	14,238,389
Total	100%	93,802,396

2. On August 19, 2021, the board of directors of ANP adopted resolutions to approve the Transaction (as defined below).

Based on the above, and on the principles of equality, mutual benefit and consensus through negotiations, the Parties hereby enter into this Agreement through friendly consultations as follows:

鉴于:

1. 截至本协议签署之日(“签署日”), 美药星的股权结构如下所示:

股东	股权比例	注册资本(美元)
甲方(AMPH)	84.82%	79,564,007
乙方(谦洽)	15.18%	14,238,389
总计	100%	93,802,396

2. 2021年8月19日, 美药星董事会通过了批准本次交易(定义见下文)的决议。

基于上述, 双方本着平等、互利和协商共识的原则, 通过友好协商, 特订立本协议如下:

1 The Transaction

Party B agrees to sell to Party A, and Party A agrees to purchase from Party B, the following equity interest (the “Target Equity”) of ANP (the “Transaction”):

Selling Shareholder	Target Equity Percentage	Registered Capital (USD)
Party B (QQ)	15.18%	14,238,389

1 本次交易

乙方同意向甲方转让, 甲方同意自乙方受让如下所示的美药星股权(“标的股权”) (“本次交易”):

转让股东	标的股权比例	注册资本(美元)
乙方(谦洽)	15.18%	14,238,389

2 Consideration of the Transaction

2.1 According to the Appraisal Report, the appraised value of the equity interest of ANP corresponding to US\$1 registered capital previously invested in ANP is US\$1.583. The appraised value of the Target Equity based upon registered capital of Party B and the appraised value of an equity interest in ANP is as follows:

Selling Shareholder	Target Equity Percentage	Registered Capital (USD)	Appraised Value (USD)
Party B (QQ)	15.18%	14,238,389	22,539,370

For the purpose of this Agreement, the “Appraisal Report” shall mean the asset appraisal report titled *Project Star III Valuation Analysis of 100% of the*

Equity Interests in Amphastar Nanjing Pharmaceuticals, Inc. issued by PricewaterhouseCoopers with the appraisal benchmark date December 31, 2020 (attached hereto as Exhibit A).

- 2.2 The Parties agree that the purchase price for the Target Equity (the “**Purchase Price**”) will be the appraised value of the Target Equity as set forth above.
- 2.3 After the Closing Date and in any event no later than October 31, 2021, Party A shall pay Party B the Purchase Price to its Asset Sale Accounts (as defined below). Party B shall inform Party A in writing of the bank account information no later than five (5) business days prior to the Closing Date.

2 本次交易的交易价款

- 2.1 根据资产评估报告，此前投入美药星的每1美元注册资本对应的美药星股权评估价值为1.583美元。基于乙方的注册资本评估的标的股权的评估价值及美药星每一股权的评估价值如下所示：

转让股东	标的股权比例	注册资本(美元)	评估价值(美元)
乙方(谦洽)	15.18%	14,238,389	22,539,370

为本协议之目的，“**资产评估报告**”系指由普华永道出具的以2020年12月31日为评估基准日的《Star III项目美药星(南京)制药有限公司100%股权投资资产评估报告》(附件A)。

- 2.2 双方同意，标的股权的转让价款(“**转让价款**”)为上述标的股权的评估价值。
- 2.3 甲方应于交割日后且在任何情况下不迟于2021年10月31日向乙方的资产变现账户(定义见下文)支付转让价款。乙方应不迟于交割日前五(5)个工作日将银行账户信息书面通知甲方。

3 The Closing of the Transaction

- 3.1 The obligations of Party A to consummate the Transaction are subject to the fulfillment, or waiver by Party A, of the following conditions:
 - (a) The boards of directors of ANP and AMPH shall have approved the Transaction;
 - (b) The articles of association shall have been amended and duly adopted and executed by the board of directors of ANP;
 - (c) The amendment registration with local branch of state administration for market regulation with respect to the Transaction (the “**SAMR Registration**”) has been completed;
 - (d) The reporting to local branch of ministry of commerce with respect to the Transaction has been completed (if necessary);

- (e) The filing with local branch of state administration of foreign exchange (or its designated commercial banks) with respect to the Transaction has been completed; and
 - (f) The asset sale accounts (the “**Asset Sale Accounts**”) of QQ have been set up.
- 3.2 The Parties agree that the date on which the conditions in Section 3.1 are completed or waived by Party A will be the closing date of the Transaction (the “**Closing Date**”). Party A will become the owner of the Target Equity as of the Closing Date and will enjoy and assume all the rights and obligations as a shareholder of ANP with respect to the Target Equity.
- 3.3 The Parties agree that all the profit and loss of the Target Equity, including but not limited to the profit and loss arising from operations, incurred during the period from the benchmark date of the appraisal report (i.e., December 31, 2020) to the Closing Date will be owned by Party B. The term “profit and loss” refers to the ownership interest in the financial statements during such period as confirmed by the Parties.
- 3.4 Each Party will bear their respective taxes arising out of or in connection with the execution and performance of this Agreement (including, without limitation, the enterprise income tax, individual income tax and stamp duty) in accordance with relevant laws and regulations of the PRC.

3 本次交易的交割

- 3.1 甲方履行本次交易的义务以下列条件得到满足或被甲方豁免为前提：
- (a) 美药星和AMPH的董事会已批准本次交易；
 - (b) 美药星的章程已相应修订，并由美药星的董事会正式通过和签署；
 - (c) 已就本次交易完成了向国家市场监督管理总局当地分支机构的登记(“**工商登记**”);
 - (d) 已就本次交易完成了向商务部门当地分支机构的报告(如需要)；
 - (e) 已就本次交易完成了向国家外汇管理部门当地分支机构(或其指定的商业银行)的登记；及
 - (f) 谦洽的资产变现账户(“**资产变现账户**”)已经设立完成。
- 3.2 双方同意，第3.1条约定的条件得到满足之日或被甲方豁免之日为本次交易的交割日(“**交割日**”)。甲方将于交割日成为标的股权的所有人，并就标的股权享有和承担作为美药星股东的所有权利和义务。
- 3.3 双方同意，标的股权自资产评估报告基准日(即2020年12月31日)至交割日期间发生的全部损益，包括但不限于经营产生的损益，归乙方所有。“损益”系指经双方确认的该期间财务报表中的所有者权益。
- 3.4 双方将根据相关中国法律法规承担各自因签署和履行本协议而产生的或与之相关的税收(包括但不限于企业所得税、个人所得税和印花税)。

4 Representations and Warranties of Party A

Party A hereby represents and warrants to Party B that the following statements are true and correct as of the Execution Date and as of the Closing Date:

- 4.1 Party A is an enterprise legal person legally registered and validly existing in accordance with the laws of the State of Delaware, the United States of America and with the legal right to perform its obligations hereunder, and has obtained all authorizations or approvals necessary for the execution of this Agreement.
- 4.2 Execution and performance of this Agreement by Party A will neither violate relevant laws, regulations, or the articles of incorporation of Party A, nor contravene any agreements entered into by Party A previously, or any statements, representations, undertakings, or warranties made by Party A in favor of any third party.

4 甲方的陈述与保证

甲方特此向乙方声明并保证, 截至签署日及交割日, 以下陈述均真实、正确:

- 4.1 甲方为根据美国特拉华州法律合法设立并有效存续的企业法人, 具有履行本协议项下义务的合法权利, 并已获得签署本协议所需的一切授权或批准。
- 4.2 甲方签署和履行本协议不会违反有关法律法规以及甲方的公司章程, 也不存在与甲方此前已签订的协议或已经向任何第三方作出的任何陈述、声明、承诺或保证相冲突之情形。

5 Representations and Warranties of Party B

Party B represents and warrants to Party A that the following statements are true and correct as of the Execution Date and as of the Closing Date:

- 5.1 Party B is an enterprise legal person legally registered and validly existing in accordance with the laws of the PRC and to perform its obligations hereunder, and has obtained all authorizations or approvals necessary for the execution of this Agreement.
- 5.2 Execution and performance of this Agreement by Party B will neither violate relevant laws, regulations, or the constitutional documents of Party B, nor contravene any agreements entered into by Party B previously, or any statements, representations, undertakings, or warranties made by Party B in favor of any third party.
- 5.3 Party B possesses valid title to all its Target Equity and has the full and valid right to sell and transfer the Target Equity to Party A, free and clear from all liens, mortgages, pledges, claims, or any third party's interests.

5 乙方的陈述与保证

乙方在此向甲方声明并保证, 截至签署日及交割日, 以下陈述均真实、正确:

- 5.1 乙方为依据中国法律合法设立并有效存续的企业法人, 具有履行本协议项下义务的合法主体资格, 并已获得签署本协议所需的一切授权或批准。
- 5.2 乙方签署及履行本协议, 不会违反有关法律、法规或乙方的宪章性文件, 也不存在与乙方此前已签订的任何协议或乙方作出的有利于任何第三方的任何陈述、声明、承诺或保证相冲突之情形。
- 5.3 乙方拥有其全部标的股权的有效的所有权, 并拥有向甲方出售和转让标的股权的完全和有效的权利, 不受任何留置权、抵押权、质押权、请求权或任何第三方权利的影响。

6 Unless expressly stated otherwise in this Agreement, any notice or other communication (a “**Notice**”) sent by one Party to the other Party in connection with this Agreement must be delivered by an internationally recognized courier, prepaid registered airmail, or other form of recorded delivery to the address set out in Section 6. The addresses of the Parties are as follows:

i If to Party A:

Attention: Kevin Barry

Address: 11570 6th Street, Rancho Cucamonga, California, USA

Email: KevinBarry@Amphastar.com

ii If to Party B:

Attention: Chongqing Zhang

Address: Suite 502, Building B8, No. 2-3, Zidong Road, Qixia District, Nanjing City

Email: njzhn1988@126.com

6 除本协议另有明确约定外, 一方向另一方发出的、与本协议相关的任何通知或其他通信(“**通知**”)必须以国际公认的快递、邮资付讫航空挂号信或其他有记录的交付形式交付至本第6条所列明的地址。双方通讯地址如下:

i 给甲方

联系人: Kevin Barry

地址: 美国加利福尼亚州库卡蒙格第6街道, 11570号

电子邮件: KevinBarry@Amphastar.com

ii 给乙方

联系人:张重庆

地址:南京市栖霞区紫东路2-3号B8栋502室

电子邮件:njzhn1988@126.com

7 Assignment

No Party may assign any rights or obligations under this Agreement, in whole or in part, to any third party without the prior written consents of the other Party. This Agreement will be binding on the Parties and their respective successors and permitted assigns.

7 权利义务的转让

未经本协议另一方事先书面同意,任何一方均不得将本协议项下的任何权利或义务全部或部分转让予任何第三方。本协议应对双方及其各自的承继人和允许的受让人具有约束力。

8 Entire Agreement

This Agreement contains the whole agreement amongst the Parties relating to the Transaction and will supersede any previous written or oral agreements between the Parties.

8 全部协议

本协议包含双方就本次交易而达成的全部协议,并将取代双方之间就本次交易在此之前所达成的任何书面或口头协议。

9 Confidentiality

9.1 Unless otherwise required by PRC Laws and US Laws, no Party may disclose this Agreement or the transactions, arrangements or any other matters agreed upon or referred to in this Agreement, or disclose the information of the other Party, without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed. The provisions of this Section will not apply to the information which has entered into the public domain (unless the information enters into the public domain due to a Party's breach of the confidentiality obligations under this Section).

9.2 Notwithstanding the provisions of Section 9.1, any Party may disclose this Agreement or the transactions, arrangements or any other matters agreed upon or referred to in this Agreement to its shareholders, employees, directors or professional advisors to the extent that such disclosure is reasonably required for the purposes of this Agreement; provided that that Party shall ensure that the relevant shareholders, employees, directors or professional advisors are aware of and comply with the confidentiality obligations referred to in this Agreement. If it is required by laws or rules of

courts or other applicable securities exchange having jurisdiction for any Party to disclose this Agreement and the transactions, arrangements or any other matters agreed upon or referred to in this Agreement, the Party may furnish only that portion of the disclosure that is legally required, but only after the form and terms of such disclosure have been notified to the other Party and the other Party has had a reasonable opportunity to comment thereon; provided that it must adopt all measures in order to obtain confidential treatment of such relevant information to the extent permitted on the applicable laws and regulations.

9 保密

- 9.1 除非中国法律和美国法律另有规定, 未经另一方事先书面同意(该同意不会被不当拒绝或延迟), 任何一方不得披露本协议或本协议中约定或提及的交易、安排、任何其他事项或另一方信息。本节的规定不适用于已进入公共领域的信息(除非该信息是由于一方违反本节规定的保密义务而进入公共领域)。
- 9.2 尽管有第9.1条的规定, 任何一方均可向其股东、雇员、董事或专业顾问披露本协议或本协议中约定或提及的交易、安排或任何其他事项, 并应以为本协议目的的合理要求为限; 但该方应确保相关股东、雇员、董事或专业顾问了解并遵守本协议中提及的保密义务。如果法律或法院判决或其他适用的有管辖权的证券交易所要求任何一方披露本协议和本协议中约定或提及的交易、安排或任何其他事项, 该方仅可以披露法律要求披露的部分, 但必须先将该等披露的形式和条款通知另一方, 且另一方有合理的机会就此发表意见; 且该方必须采取一切措施, 以便在适用法律和法规允许的范围对该等相关信息进行保密处理。

10 Force Majeure

- 10.1 An event of force majeure referred to in this Agreement shall mean any unforeseen, unavoidable and insurmountable events which are beyond the control of a Party to this Agreement, and which arise after the Effective Date and as a result of which any Party is unable to perform its obligations under this Agreement. Such events shall include in particular earthquakes, typhoons, flood, fire, other acts of nature, epidemic, war, riots, hostility, public disturbance, acts of public enemies, prohibitions or acts of any governmental authority or public agency (“**Force Majeure Event**”).
- 10.2 The Party which claims to be affected by a Force Majeure Event shall promptly inform the other Party in writing of said Force Majeure Event. The Party claiming that the Force Majeure Event makes its performance of this Agreement objectively impossible or impractical must use its best reasonable endeavors to resolve or mitigate the consequences of said Force Majeure Event.
- 10.3 Failure of any Party to perform its obligations under this Agreement in whole or in part, as a result of a Force Majeure Event as described in Section 10.1

shall not constitute a breach of this Agreement, and the performance of such obligations will suspend during the Force Majeure Event until resolved. The Parties shall immediately resume performance of their respective obligations under this Agreement upon resolution of the Force Majeure Event. Where the Force Majeure Event or its impact lasts for 60 days or more, any Party may terminate this Agreement by sending notice of such termination to the other Party in writing.

10 不可抗力

- 10.1 本协议所称不可抗力事件是指在生效日之后发生的且导致任一方无法履行其在本协议项下的义务的、超出本协议一方控制范围的任何不可预见、不可避免且不可克服的事件。此类事件尤其应包括地震、台风、洪水、火灾、其他自然灾害、流行病、战争、暴动、敌意、公众骚乱、公敌行动、任何政府机关或公共机构的禁令或行为(“**不可抗力事件**”)。
- 10.2 主张受到不可抗力事件影响的一方应立即通过书面形式将该等不可抗力事件通知其他方。主张不可抗力事件导致其对本协议的履行在客观上成为不可能或不实际的一方, 应尽最大合理努力消除或减轻此等不可抗力事件的影响。
- 10.3 第10.1条所述的不可抗力事件导致一方未能全部或部分履行其在本协议项下的义务不应构成对本协议的违约, 该等义务的履行将在不可抗力事件期间中止, 直至得到解决。不可抗力事件解决后, 双方应立即恢复履行各自在本协议项下的义务。如果不可抗力事件或其影响持续六十(60)日或以上, 任何一方均可向另一方发出书面通知终止本协议。

11 Liabilities for Breach

- 11.1 Where any Party violates its representations, warranties, obligations or responsibilities under this Agreement or otherwise breaches this Agreement (“**Breaching Party**”), the Breaching Party shall be liable for its breach of this Agreement. This Agreement shall not restrict, and is not intended to limit, a Party’s right to seek damages including economic losses, reasonable costs and fees incurred as a result of such breach including, but not limited to, reasonable attorneys’ fees, notarial fees, travel expenses, execution fees, appraisal fees, and arbitration fees.
- 11.2 No failure of any Party to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement (each a “**Right**”) shall operate as a waiver thereof, nor shall any single or partial exercise of any Right preclude any other or further exercise of such Right or exercise of any other Right. The Rights provided in this Agreement are cumulative and not exclusive of any other Rights (whether provided by law or otherwise). Any express waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

11 违约责任

- 11.1 任何一方违反其在本协议项下的陈述、保证、义务或责任或以其他方式违反本协议(“**违约方**”), 则违约方应就其在本协议项下的违约承担违约责任。本协议不应限制, 或旨在限制一方寻求因该等违约要求损害赔偿的权利, 包括经济损失、因违约而产生的合理费用和开支, 包括但不限于合理的律师费、公证费、差旅费、执行费、鉴定费和仲裁费等。
- 11.2 任何一方未行使或延迟行使与本协议有关的任何权利、权力或救济(“**权利**”), 均不得视为对该权利的放弃, 行使任何单一或部分权利, 也不得妨碍任何其他或进一步行使该权利或行使其他任何权利。本协议规定的权利是累积的, 不排除任何其他权利(不论是法律或其他规定)。对本协议的任何违约的任何明确放弃不应被视为对任何随后违约的放弃。

12 Effectiveness and Termination of the Agreement

12.1 This Agreement shall take effect on the Execution Date (“**Effective Date**”).

12.2 This Agreement may be terminated under the following circumstances:

- i This Agreement may be terminated upon unanimous agreement by the Parties through consultations. Such consultation must be requested by a Party in writing.
- ii This Agreement may be terminated pursuant to Section 10.3 above.

12.3 Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued or which thereafter may accrue in respect of any act or omission prior to such termination. The confidentiality provisions of this Agreement, as described in Section 9, shall survive termination of this Agreement.

12 协议的生效和终止

12.1 本协议于签署日生效(“**生效日**”)。

12.2 本协议可在以下情况终止:

- i 本协议可在双方通过协商一致后终止。该等协商须由一方以书面形式提出。
- ii 本协议可根据上述第10.3条终止。

12.3 因任何原因终止本协议, 不得排除一方在终止时已经产生或此后可能产生的与终止前的任何作为或不作为有关的任何责任。本协议第9条所述的保密义务在本协议终止后应继续有效。

13 Severability

If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any PRC law, such provision in whole or in part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

13 可分割性

如果根据任何中国法律, 本协议中的任何条款被认定为全部或部分违法、无效或不可执行, 则该条款的全部或部分应在此范围内被视为不构成本协议的一部分, 但本协议其余部分的合法性、有效性和可执行性不受影响。

14 Applicable Law and Dispute Resolution

14.1 The formation, performance, validity and interpretation of, and resolution of disputes under this Agreement shall be governed by PRC laws.

14.2 In the event of any dispute arising out of the interpretation and performance of this Agreement, the Parties shall resolve such dispute through friendly consultations requested in writing. If any dispute is not resolved by friendly consultations within 30 days after the date such consultations were first requested in writing by a Party, either Party may submit the relevant dispute to the Shanghai International Arbitration Center (“SHIAC”) and resolved in accordance with the arbitration rules of SHIAC in force at the time of applying for arbitration. The place of arbitration shall be Shanghai, and the language used in arbitration shall be Chinese and English. The arbitration award shall be final and binding on the Parties.

14 适用法律及争议解决

14.1 本协议的订立、履行、效力、解释和争议的解决均受中国法律管辖。

14.2 如因本协议的解释和履行而产生任何争议, 双方应通过书面请求进行友好协商解决。如果任何争议在一方首次以书面形式请求友好协商之日起30天内未能解决, 任何一方均可将有关争议提交上海国际仲裁中心(“**上海仲裁中心**”), 并按照申请仲裁时有效的上海仲裁中心的仲裁规则解决。仲裁地点为上海, 仲裁语言为中文和英文。仲裁裁决为最终裁决, 对双方具有约束力。

15 Short Form Equity Transfer Agreement

To the extent required for purpose of SAMR Registration, the Parties agree to use their commercially reasonable efforts to enter into a short form of the equity transfer agreement with respect to the Transaction. If there is any conflict or discrepancy between such short form equity transfer agreement and this Agreement, this Agreement shall prevail.

15 简版股权转让协议

在为工商登记之目的要求下, 双方同意尽其商业上的合理努力, 就本次交易签订简版股权转让协议。如果该简版股权转让协议与本协议之间存在任何冲突或差异, 应以本协议为准。

16 Language

This Agreement is signed in Chinese and English. The Chinese version of this Agreement shall prevail when any conflict in interpretation arises.

16 语言

本协议以中文和英文签署。如解释上发生任何冲突，应以本协议的中文版本为准。

17 Counterparts

This Agreement is signed in seven (7) originals. ANP shall retain two (2) original, and AMPH shall retain two (2) originals, and QQ shall retain one (1) original and two (2) for governmental registration or filing. Each original has equal legal effect.

17 副本

本协议一式柒(7)份，美药星执贰(2)份，AMPH执贰(2)份，谦洽执壹(1)份，贰(2)份用于工商登记或备案。每份具有同等法律效力。

(No text on this page. This is the signature page of the Share Purchase Agreement /本页无正文, 为股权转让协议签署页)

Amphastar Pharmaceuticals, Inc.,

/s/Kevin Barry

Name/姓名: Kevin Barry

Title/职务: Authorized Signatory/授权签字人

(No text on this page. This is the signature page of the Share Purchase Agreement /本页无正文, 为股权转让协议签署页)

Nanjing Qianqia Enterprise Management Consulting (LLP)

南京谦洽企业管理咨询中心(有限合伙)

(Seal/盖章)

/s/Chongqing Zhang

Name/姓名: Chongqing Zhang/张重庆

Title/职务: Executive Partner/执行事务合伙人

附件A 资产评估报告
Exhibit A The Appraisal Report
15

Certification

I, Jack Y. Zhang, Ph.D., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Amphastar Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2021

By: /s/ JACK Y. ZHANG
 Jack Y. Zhang
 Chief Executive Officer
 (Principal Executive Officer)

**Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted
pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

The undersigned officer of Amphastar Pharmaceuticals, Inc. (the “Company”), hereby certifies, to the best of such officer’s knowledge, that:

(i) the Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2021 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

By: /s/ JACK Y. ZHANG
 Jack Y. Zhang
 Chief Executive Officer
 (Principal Executive Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. §1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted
pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

The undersigned officer of Amphastar Pharmaceuticals, Inc. (the "Company"), hereby certifies, to the best of such officer's knowledge, that:

(i) the Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2021 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

By: /s/ WILLIAM J. PETERS
 William J. Peters
 Chief Financial Officer
 (Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. §1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.
