

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 19, 2024



THE DAVEY TREE EXPERT COMPANY

(Exact name of registrant as specified in its charter)

Ohio
(State or other jurisdiction
of incorporation)

000-11917
(Commission
File Number)

34-0176110
(Employer Identification
Number)

**1500 North Mantua Street
P.O. Box 5193
Kent, OH 44240**

(Address of principal executive offices) (Zip Code)

(330) 673-9511

(Registrant's telephone number, including area code)

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
N/A	N/A	N/A

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement

On July 19, 2024, The Davey Tree Expert Company (“Davey Tree” or the “Company”) entered into a Twelfth Amendment (the “Amendment”) to the Receivables Financing Agreement, dated as of May 9, 2016 (the “RFA”), by and among: (i) Davey Tree, as initial Servicer, (ii) Davey Receivables LLC, an Ohio limited liability company, special purpose entity and wholly-owned subsidiary of Davey Tree, as Borrower (the “Borrower”), and (iii) PNC Bank, National Association, as LC Bank, Lender and Administrative Agent (“PNC”). The RFA was entered into as part of an accounts receivable securitization program (the “AR Securitization Facility”).

The Amendment (i) extends for another year, until July 20, 2025, the scheduled termination date of the RFA, which was set to expire July 21, 2024, unless terminated earlier pursuant to the terms of the RFA, (ii) provides that PNC, as a lender, may issue loans to the Borrower, in addition to letters of credit, under the AR Securitization Facility, and (iii) increases the AR Securitization Facility limit to \$125.0 million and provides that the limit may be increased to up to \$150.0 million.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment, a copy of which is attached as [Exhibit 10.1](#) to this Current Report on Form 8-K and is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

See the information set forth in Item 1.01 of this Current Report on Form 8-K, which is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit Number</u>	<u>Description to Exhibit</u>
10.1	Receivables Financing Agreement Amendment No. 12, dated July 19, 2024, among The Davey Tree Expert Company, Davey Receivables LLC and PNC Bank, National Association.*
104	Cover Page Interactive Data File

* Certain of the exhibits and schedules to this exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5). The Company agrees to furnish a copy of all omitted exhibits and schedules to the Securities and Exchange Commission upon its request.

SIGNATURE

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 hereunto duly authorized.

THE DAVEY TREE EXPERT COMPANY

By: /s/ Joseph R. Paul

Joseph R. Paul, Executive Vice President,
Chief Financial Officer and Assistant Secretary

Date: July 24, 2024

RECEIVABLES FINANCING AGREEMENT AMENDMENT NO. 12

This Receivables Financing Agreement Amendment No. 12 (this “*Amendment*”), dated as of July 19, 2024, among DAVEY RECEIVABLES LLC, an Ohio limited liability company, as Borrower (together with its successors and assigns, the “*Borrower*”); THE DAVEY TREE EXPERT COMPANY, an Ohio corporation, in its individual capacity (“*Davey Tree*”) and as Servicer (in such capacity, together with its successors and assigns in such capacity, the “*Servicer*”); PNC BANK, NATIONAL ASSOCIATION, as LC Bank (in such capacity, together with its successors and assigns in such capacity, the “*LC Bank*”) and as Lender (in such capacity, together with its successors and assigns in such capacity, the “*Lender*”); and PNC BANK, NATIONAL ASSOCIATION (“*PNC*”), as Administrative Agent (in such capacity together with its successors and assigns in such capacity, the “*Administrative Agent*”).

W I T N E S S E T H:

WHEREAS, the Borrower, the Servicer, the LC Bank and the Administrative Agent are party to that certain Receivables Financing Agreement dated as of May 9, 2016 (as amended prior to the date hereof, the “*Financing Agreement*”).

WHEREAS, the Borrower, the Servicer, the LC Bank, the Lender and the Administrative Agent hereby agree to extend the Scheduled Termination Date and to make certain amendments to the Financing Agreement pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged by the parties, the Borrower, the Servicer, the LC Bank, the Lender and the Administrative Agent hereto agree as follows:

SECTION 1. DEFINITIONS. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Financing Agreement.

SECTION 2. AMENDMENTS.

Subject to the satisfaction of the conditions precedent set forth in Section 4 below, the Financing Agreement, including the Exhibits thereto, shall hereby be amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the underlined text (indicated textually in the same manner as the following example: double underlined text) as set forth in the pages of the amended Financing Agreement attached as **Exhibit A** hereto.

SECTION 3. REPRESENTATIONS OF THE BORROWER AND THE SERVICER. Each of the Borrower and the Servicer hereby represent and warrant to the parties hereto that as of the date hereof each of the representations and warranties contained in Article VII of the Financing Agreement and any other Transaction Documents to which it is a party are true and correct as of the date hereof and after giving effect to this Amendment (except to the extent that such representations and warranties expressly refer to an earlier date, in which case they are true and correct as of such earlier date).

SECTION 4. CONDITIONS PRECEDENT. This Amendment shall become effective and be deemed effective as of the date first written above upon the satisfaction of the following conditions precedent:

(a) the Administrative Agent shall have received a fully executed counterpart of this Amendment;

(b) the Administrative Agent shall have received a fully executed counterpart of that certain Fifth Amended and Restated Fee Letter dated as of the date hereof, and all fees due thereunder;

(c) each representation and warranty of the Borrower and the Servicer contained herein or in any other Transaction Document (after giving effect to this Amendment) shall be true and correct (except to the extent that such representations and warranties expressly refer to an earlier date, in which case they are true and correct as of such earlier date); and

(d) no Unmatured Event of Default or Event of Default shall have occurred and be continuing.

SECTION 5. COUNTERPARTS. This Amendment may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 6. ELECTRONIC SIGNATURES. Each party agrees that this Amendment and any documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Amendment and such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

SECTION 7. SEVERABILITY. Any provision of this Amendment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 8. GOVERNING LAW AND JURISDICTION. The provisions of the Financing Agreement with respect to governing law, jurisdiction, and agent for service of process are incorporated in this Amendment by reference as if such provisions were set forth herein.

SECTION 9. MISCELLANEOUS. For the avoidance of doubt, this Amendment shall constitute a Transaction Document.

[Signatures appear on following page.]

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

DAVEY RECEIVABLES LLC

By: /s/ Christopher J. Bast
Name: Christopher J. Bast
Title: Senior Vice President and Treasurer

THE DAVEY TREE EXPERT COMPANY,
as the Servicer

By: /s/ Christopher J. Bast
Name: Christopher J. Bast
Title: Senior Vice President, Treasurer and
Operations Support

PNC BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: /s/ Michael Brown
Name: Michael Brown
Title: Executive Vice President

PNC BANK, NATIONAL ASSOCIATION,
as LC Bank and Lender

By: /s/ Michael Brown
Name: Michael Brown
Title: Executive Vice President

Exhibit A

CONFORMED VERSION THROUGH
(~~AMENDMENT NO. 1 DATED AS OF MARCH 27, 2017,~~
~~AMENDMENT NO. 2 DATED AS OF MAY 8, 2017,~~
~~AMENDMENT NO. 3 DATED AS OF MAY 7, 2018, AND~~
~~AMENDMENT NO. 4 DATED AS OF AUGUST 23, 2018~~
~~AMENDMENT NO. 5 DATED AS OF JANUARY 24, 2019)~~
~~AMENDMENT NO. 6 DATED AS OF APRIL 16, 2019~~
~~AMENDMENT NO. 7 DATED AS OF MAY 21, 2019~~
~~COMMITMENT INCREASE REQUEST DATED AS OF AUGUST 15, 2019~~
~~AMENDMENT NO. 8 DATED AS OF MAY 19, 2020~~
~~AMENDMENT NO. 9 DATED AS OF MAY 18, 2021~~
~~AMENDMENT NO. 10 DATED AS OF JUNE 30, 2022~~
~~COMMITMENT INCREASE REQUEST 12 DATED AS OF JULY 619, 20222024~~
~~AMENDMENT NO. 11 DATED AS OF JUNE 29, 2023~~

RECEIVABLES FINANCING AGREEMENT

Dated as of May 9, 2016

by and among

DAVEY RECEIVABLES LLC,
as Borrower,

PNC BANK, NATIONAL ASSOCIATION,
as Lender,

PNC BANK, NATIONAL ASSOCIATION,
as LC Bank,

PNC BANK, NATIONAL ASSOCIATION,
as Administrative Agent,

THE DAVEY TREE EXPERT COMPANY,
as initial Servicer

and

PNC CAPITAL MARKETS LLC,
as Structuring Agent

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This RECEIVABLES FINANCING AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “*Agreement*”) is entered into as of May 9, 2016 by and among the following parties:

- (i) DAVEY RECEIVABLES LLC, an Ohio limited liability company, as Borrower (together with its successors and assigns, the “*Borrower*”);
- (ii) PNC BANK, [NATIONAL ASSOCIATION as a Lender](#);
- (iii) PNC BANK, NATIONAL ASSOCIATION, as LC Bank (in such capacity, together with its successors and assigns in such capacity, the “*LC Bank*”);
- (~~iii~~iv) PNC BANK, NATIONAL ASSOCIATION (“*PNC*”), as Administrative Agent;
- (~~iv~~v) THE DAVEY TREE EXPERT COMPANY, an Ohio corporation, in its individual capacity (“*Davey Tree*”) and as initial Servicer (in such capacity, together with its successors and assigns in such capacity, the “*Servicer*”); and
- (~~v~~vi) PNC CAPITAL MARKETS LLC, a Pennsylvania limited liability company, as Structuring Agent.

PRELIMINARY STATEMENTS

The Borrower has acquired, and will acquire from time to time, Receivables from the Originator(s) pursuant to the Receivables Purchase Agreement. The Borrower has requested [\(a\) that the Lenders make Loans from time to time to the Borrower and \(b\) that](#) the LC Bank ~~to~~ issue Letters of Credit for the account of the Borrower from time to time, on the terms, and subject to the conditions set forth herein, secured by, among other things, the Receivables.

In consideration of the mutual agreements, provisions and covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“*Account Control Agreement*” means each agreement, in form and substance satisfactory to the Administrative Agent, among the Borrower, the Servicer, the Administrative Agent and a Collection Account Bank, governing the terms of the related Collection Accounts that (i) provides the Administrative Agent with control within the meaning of the UCC over the deposit accounts subject to such agreement, and (ii) may not be terminated or canceled by the related Collection Account Bank without the written consent of the Administrative Agent or upon no less than thirty (30) days prior written notice to the Administrative Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“*Adjusted LC Amount*” means, at any time of determination, the greater of (i) the LC Amount *minus* the amount of cash collateral held in the LC Collateral Account at such time and (ii) zero (~~mm~~\$0).

“*Administrative Agent*” means PNC, in its capacity as contractual representative for the Credit Parties, and any successor thereto in such capacity appointed pursuant to Article XI or Section 14.03(c).

“*Administrative Agent’s Account*” means the account from time to time designated by the Administrative Agent to the Borrower and the Servicer for purposes of receiving payments to or for the account of the Credit Parties hereunder.

“*Adverse Claim*” means any ownership interest or claim, mortgage, deed of trust, pledge, lien, security interest, hypothecation, charge or other encumbrance or security arrangement of any nature whatsoever, whether voluntarily or involuntarily given, including, but not limited to, any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security and any filed financing statement or other notice of any of the foregoing (whether or not a lien or other encumbrance is created or exists at the time of the filing); it being understood that any of the foregoing in favor of, or assigned to, the Administrative Agent (for the benefit of the Secured Parties) shall not constitute an Adverse Claim.

“*Advisors*” has the meaning set forth in Section 14.06(c).

“*Affected Person*” means each Credit Party.

“*Affiliate*” means, as to any Person: (a) any Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or (b) who is a director or officer: (i) of such Person or (ii) of any Person described in clause (a). For purposes of this definition, control of a Person means the power, direct or indirect: (x) to vote 25% or more of the securities having ordinary voting power for the election of directors or managers of such Person or (y) to direct or cause the direction of the management and policies of such Person, in either case whether by ownership of securities, contract, proxy or otherwise.

“*Aggregate Capital*” means, at any time of determination, the aggregate outstanding Capital of all Lenders at such time.

“*Aggregate Interest*” means, at any time of determination, the aggregate accrued and unpaid Interest on the ~~Outstanding Reimbursement Obligations~~Aggregate Capital at such time.

“*Agreement*” has the meaning set forth in the preamble to this Agreement.

“*Anti-Terrorism Laws*” means any Applicable Law relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such Applicable Laws, all as amended, supplemented or replaced from time to time.

“*Applicable Law*” means, with respect to any Person, (x) all provisions of law, statute,

treaty, constitution, ordinance, rule, regulation, ordinance, requirement, restriction, permit, executive order, certificate, decision, directive or order of any Governmental Authority applicable to such Person or any of its property and (y) all judgments, injunctions, orders, writs, decrees and awards of all courts and arbitrators in proceedings or actions in which such Person is a party to the extent applicable to such Person or by which any of its property is bound. For the avoidance of doubt, FATCA shall constitute an “Applicable Law” for all purposes of this Agreement.

“Assignment and Acceptance Agreement” means an assignment and acceptance agreement entered into by a Lender, an Eligible Assignee, and the Administrative Agent, and, if required, the Borrower, pursuant to which such Eligible Assignee may become a party to this Agreement, in substantially the form of Exhibit J hereto.

“Attorney Costs” means and includes all reasonable fees, costs, expenses and disbursements of any law firm or other external counsel and all reasonable disbursements of internal counsel.

“Bankruptcy Code” means the United States Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, *et seq.*), as amended from time to time.

“Base Rate” means, for any day and for the LC Bank or any Lender, a fluctuating interest rate per annum as shall be in effect from time to time, which rate shall be at all times equal to the greatest of:

(a) the rate of interest in effect for such day as publicly announced from time to time by the LC Bank or such Lender as its “reference rate” or “prime rate”, as applicable. Such “reference rate” or “prime rate” is set by the LC Bank or applicable Lender based upon various factors, including such Person’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate, and is not necessarily the lowest rate charged to any customer;

(b) 0.50% per annum above the Overnight Bank Funding Rate in effect on such day;
and

(c) 1.00% above per annum above Daily 1M SOFR in effect on such day plus the SOFR Adjustment;

provided, however, if the Base Rate as determined above would be less than zero, then such rate shall be deemed to be zero.

“Bill Plan Receivables” means a Receivable that has been fully earned and that is related to a Contract that allows for invoicing in installments over a specified period.

“Borrower” has the meaning specified in the preamble to this Agreement.

“Borrower Indemnified Amounts” has the meaning set forth in Section 13.01(a).

“Borrower Indemnified Party” has the meaning set forth in Section 13.01(a).

“*Borrower Obligations*” means all present and future indebtedness, reimbursement obligations, and other liabilities and obligations (howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or due or to become due) of the Borrower to any Credit Party, Borrower Indemnified Party and/or any Affected Person, arising under or in connection with this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby, and shall include, without limitation, all ~~Reimbursement Obligations~~ Capital and Interest with respect thereto, reimbursement for drawings under the Letters of Credit, all Fees and all other amounts due or to become due under the Transaction Documents (whether in respect of fees, costs, expenses, indemnifications or otherwise), including, without limitation, interest, fees and other obligations that accrue after the commencement of any Insolvency Proceeding with respect to the Borrower (in each case whether or not allowed as a claim in such proceeding).

“*Borrower’s Net Worth*” means, at any time of determination, an amount equal to (i) the aggregate Outstanding Balance of all Pool Receivables at such time, *minus* (ii) the sum of (A) the ~~Outstanding Reimbursement Obligations~~ Aggregate Capital at such time, *plus* (B) the Adjusted LC Amount at such time, *plus* (C) the Aggregate Interest at such time, *plus* (D) the aggregate accrued and unpaid Fees at such time, *plus* (E) the aggregate outstanding principal balance of all Subordinated Notes at such time, *plus* (F) the aggregate accrued and unpaid interest on all Subordinated Notes at such time, *plus* (G) without duplication, the aggregate accrued and unpaid other Borrower Obligations at such time.

“*Borrowing Base*” means, at any time of determination, the amount equal to (a) the Net Receivables Pool Balance at such time, *minus* (b) the Total Reserves at such time.

“*Borrowing Base Deficit*” means, at any time of determination, the amount, if any, by which (a) the ~~Outstanding Reimbursement Obligations~~ Aggregate Capital plus the Adjusted LC Amount at such time, exceeds (b) the lesser of (i) Borrowing Base at such time and (ii) the Facility Limit at such time.

“*Breakage Fee*” means (i) for any Settlement Period for which Interest is computed by reference to SOFR and a reduction of Capital is made for any reason on any day other than a Settlement Date or (ii) to the extent that the Borrower shall for any reason, fail to borrow on the date specified by the Borrower in connection with any request for funding pursuant to Article II of this Agreement, the amount, if any, by which (A) the additional Interest (calculated without taking into account any Breakage Fee or any shortened duration of such Settlement Period pursuant to the definition thereof) which would have accrued during such Settlement Period on the reductions of Capital relating to such Settlement Period had such reductions not been made (or, in the case of clause (ii) above, the amounts so failed to be borrowed or accepted in connection with any such request for funding by the Borrower), exceeds (B) the income, if any, received by the applicable Lender from the investment of the proceeds of such reductions of Capital (or such amounts failed to be borrowed by the Borrower). A certificate as to the amount of any Breakage Fee (including the computation of such amount) shall be submitted by the affected Lender to the Borrower and shall be conclusive and binding for all purposes, absent manifest error.

“*Business Day*” means any day (other than a Saturday or Sunday) on which banks are not authorized or required to close in Pittsburgh, Pennsylvania or New York City, New York; provided that, when used in connection with an amount that accrues Interest at a rate based on

SOFR or any direct or indirect calculation or determination of SOFR, the term “Business Day” means any such day that is also a U.S. Government Securities Business Day.

“Capital” means, with respect to any Lender, without duplication, the aggregate amounts (i) paid to, or on behalf of, the Borrower in connection with all Loans made by such Lender pursuant to Article II, (ii) paid by such Lender to the LC Bank in respect of a Participation Advance made by such Lender to the LC Bank pursuant to Section 3.04(b) and (iii) with respect to a Lender that is the LC Bank, paid by the LC Bank with respect to all drawings under the Letter of Credit (including, for the avoidance of doubt, Reimbursement Obligations) to the extent such drawings have not been reimbursed by the Borrower or funded by Participation Advances, as reduced from time to time by Collections distributed and applied on account of such Capital pursuant to Section 4.01; *provided*, that if such Capital shall have been reduced by any distribution and thereafter all or a portion of such distribution is rescinded or must otherwise be returned for any reason, such Capital shall be increased by the amount of such rescinded or returned distribution as though it had not been made.

“*Capital Stock*” means, with respect to any Person, any and all common shares, preferred shares, interests, participations, rights in or other equivalents (however designated) of such Person’s capital stock, partnership interests, limited liability company interests, membership interests or other equivalent interests and any rights (other than debt securities convertible into or exchangeable for capital stock), warrants or options exchangeable for or convertible into such capital stock or other equity interests.

“*Change in Control*” means the occurrence of any of the following:

(a) Davey Tree ceases to own, directly, 100% of the issued and outstanding Capital Stock and all other equity interests of the Borrower, free and clear of all Adverse Claims;

(b) Davey Tree ceases to own 100% of the issued and outstanding Capital Stock, membership interests or other equity interests of any Originator (other than Davey Tree); or

(c) (A) the acquisition, or, if earlier, the shareholder or director approval of the acquisition, ownership or voting control, directly or indirectly, beneficially or of record, on or after the Closing Date, by any Person or group (within the meaning of Rule 13d-3 of the SEC under the Securities Exchange Act of 1934, as then in effect), of shares representing more than thirty-three percent (33%) of the aggregate ordinary Voting Power represented by the issued and outstanding capital stock of Davey Tree; (B) the occupation of a majority of the seats (other than vacant seats) on the board of directors of Davey Tree by Persons who were neither (i) nominated by the board of directors of Davey Tree nor (ii) appointed by directors so nominated; or (C) the approval by the shareholders or directors of Davey Tree of a plan of complete liquidation of Davey Tree or an agreement or agreements for the sale or disposition by Davey Tree of all or substantially all of Davey Tree’s assets; *provided* that purchases or other acquisitions of equity interests by, and sales or other transfers of equity interests to or within the Davey ESOP in accordance with its terms shall not be deemed or construed to cause, trigger or otherwise result in a Change in Control.

“*Change in Law*” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (w) the final rule titled Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues, adopted by the United States bank regulatory agencies on December 15, 2009, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to the agreements reached by the Basel Committee on Banking Supervision in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems” (as amended, supplemented or otherwise modified or replaced from time to time), shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“*Closing Date*” means May 9, 2016.

“*Code*” means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

“*Collateral*” has the meaning set forth in Section 5.05(a).

“*Collection Account*” means each account listed on Schedule II to this Agreement (as such schedule may be modified from time to time in connection with the closing or opening of any Collection Account in accordance with the terms hereof) (in each case, in the name of the Borrower) and maintained at a bank or other financial institution acting as a Collection Account Bank pursuant to an Account Control Agreement for the purpose of receiving Collections.

“*Collection Account Bank*” means any of the banks or other financial institutions holding one or more Collection Accounts.

“*Collections*” means, with respect to any Pool Receivable: (a) all funds that are received by any Originator, the Borrower, the Servicer or any other Person on their behalf in payment of any amounts owed in respect of such Pool Receivable (including purchase price, finance charges, interest and all other charges), or applied to amounts owed in respect of such Pool Receivable (including insurance payments and net proceeds of the sale or other disposition of repossessed goods or other collateral or property of the related Obligor or any other Person directly or indirectly liable for the payment of such Pool Receivable and available to be applied thereon), (b) all Deemed Collections with respect to such Pool Receivable, (c) all proceeds of all Related Security with respect to such Pool Receivable, and (d) all other proceeds of such Pool Receivable.

“*Commitment*” means, with respect to any Lender or the LC Bank, as applicable, the maximum aggregate amount which ~~the LC Bank~~ such Person is obligated to lend or pay hereunder

on account of all Loans and all drawings under all Letters of Credit, on a combined basis, as set forth on Schedule I or other agreement pursuant to which it became a Lender, as such amount may be modified in connection with any subsequent assignment pursuant to Section 14.03 or in connection with a reduction or an increase in the Facility Limit pursuant to Section ~~3.112.05~~. If the context so requires, “Commitment” also refers to the LC Bank’s or a Lender’s obligation to make Loans, make Participation Advances and/or issue Letters of Credit hereunder in accordance with this Agreement.

“*Concentration Percentage*” means (i) for any Group A Obligor, 20.00%, (ii) for any Group B Obligor, 15.00%, (iii) for any Group C Obligor, 10.00% and (iv) for any Group D Obligor, 5.00%.

“*Concentration Reserve Percentage*” means, at any time of determination, the largest of: (a) the sum of the five (5) largest Obligor Percentages of the Group D Obligors, (b) the sum of the three (3) largest Obligor Percentages of the Group C Obligors, (c) the sum of the two (2) largest Obligor Percentage of the Group B Obligors, and (d) the largest Obligor Percentage of the Group A Obligors.

“*Conforming Changes*” means, with respect to the Term SOFR Rate or any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate”, the definition of “Business Day”, timing and frequency of determining rates and making payments of Interest, 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 Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of the Term SOFR Rate or such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Term SOFR Rate or the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Transaction Documents).

“*Contract*” means, with respect to any Receivable, any and all contracts, instruments, agreements, leases, invoices, notes or other writings, pursuant to which such Receivable arises or that evidence such Receivable or under which an Obligor becomes or is obligated to make payment in respect of such Receivable.

“*Controlled Group*” means all members of a controlled group of corporations or other business entities and all trades or businesses (whether or not incorporated) under common control which, together with Davey Tree or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

“*Covered Entity*” shall mean (a) each of the Borrower, the Servicer, each Originator and each of Davey Tree’s Subsidiaries and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and

outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

“*Credit and Collection Policy*” means, as the context may require, those receivables credit and collection policies and practices of the Originators in effect on the Closing Date or, if later, at the time such Person became an Originator, and described in Exhibit E, as modified in compliance with this Agreement.

“*Credit Extension*” means the making of any Loan or the issuance of any Letter of Credit or any modification, extension or renewal of any Letter of Credit.

“*Credit Party*” means the LC Bank, each ~~Program-Participant~~Lender and the Administrative Agent.

“*Credit Risk Retention Rules*” means (i) Section 15G of the Securities Exchange Act of 1934, as amended, and (ii) Articles 404-410 of the EU Capital Requirements Regulation (including Article 122a of the Banking Consolidation Directive), in each case, together with the rules and regulations thereunder.

“*Daily 1M SOFR*” means, for any day, the rate per annum determined by PNC by dividing (the resulting quotient rounded upwards, at PNC’s discretion, to the nearest 1/100th of 1%) (a) the Term SOFR Reference Rate for such day for a one (1) month period, as published by the Term SOFR Administrator, by (b) a number equal to 1.00 minus the SOFR Reserve Percentage; provided, that if Daily 1M SOFR, determined as provided above, would be less than the SOFR Floor, then Daily 1M SOFR shall be deemed to be the SOFR Floor. The rate of interest will be adjusted automatically as of each Business Day based on changes in Daily 1M SOFR without notice to the Borrower.

“*Davey ESOP*” means The Davey 401KSOP and Employee Stock Ownership Plan (March 1, 2003 Restatement), as amended.

“*Davey Tree*” has the meaning set forth in the preamble to this Agreement.

“*Davey Tree Group*” has the meaning set forth in Section 8.03(c).

“*Days’ Sales Outstanding*” means, for any Fiscal Month, an amount computed as of the last day of such Fiscal Month equal to: (a) the average of the aggregate Outstanding Balance of all Pool Receivables (other than Unbilled Receivables) as of the last day of each of the three most recent Fiscal Months ended on the last day of such Fiscal Month, *divided by* (b) an amount equal to (i) the aggregate initial Outstanding Balance of all Pool Receivables (other than Unbilled Receivables) originated by the Originators during the three most recent Fiscal Months ended on the last day of such Fiscal Month, *divided by* (ii) 90.

“*Debt*” means, as to any Person at any time of determination, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (i)

however, that such amount shall be calculated without giving effect to any netting of credits that have not been matched to a particular Receivable for the purposes of aged trial balance reporting.

“*Dilution Horizon Ratio*” means, for any Fiscal Month, the ratio (expressed as a percentage and rounded to the nearest 1/100th of 1%, with 5/1000th of 1% rounded upward) computed as of the last day of such Fiscal Month by dividing: (a) the aggregate initial Outstanding Balance of all Pool Receivables (other than Unbilled Receivables) originated by the Originators during the two (2) most recently ended Fiscal Months (including such Fiscal Month), by (b) the Net Receivables Pool Balance as of the last day of such Fiscal Month. The numerator of the Dilution Horizon Ratio may be adjusted by the Administrative Agent upon not less than five (5) Business Days’ notice to the Borrower to reflect such number of Fiscal Months as the Administrative Agent believes best reflects the business practices of the Servicer and the Originators and the actual amount of dilution and Deemed Collections that occur with respect to Pool Receivables based on the weighted average dilution lag calculation completed as part of such audit or field exam.

“*Dilution Ratio*” means, for any Fiscal Month, the ratio (expressed as a percentage and rounded to the nearest 1/100th of 1%, with 5/1000th of 1% rounded upward), computed as of the last day of each Fiscal Month by dividing: (a) the aggregate amount of Deemed Collections during such Fiscal Month (other than any Deemed Collections with respect to any Receivables that were both (I) generated by an Originator during such Fiscal Month and (II) written off the applicable Originator’s or the Borrower’s books as uncollectible during such Fiscal Month), by (b) the aggregate initial Outstanding Balance of all Pool Receivables (other than Unbilled Receivables) originated by the Originators during the Fiscal Month that is one (1) month prior to such Fiscal Month.

“*Dilution Reserve Percentage*” means, on any day, the product of (a) the sum of (i) the product of (x) 2.25, multiplied by (y) the arithmetic average of the Dilution Ratios for the twelve most recent Fiscal Months, plus (ii) the Dilution Volatility Component, multiplied by (b) the Dilution Horizon Ratio.

“*Dilution Volatility Component*” means, for any Fiscal Month, the product (expressed as a percentage) of: (a) the positive difference, if any, between: (i) the highest Dilution Ratio for any Fiscal Month during the twelve most recent Fiscal Months and (ii) the arithmetic average of the Dilution Ratios for such twelve Fiscal Months times (b) a fraction equal to (i) the highest Dilution Ratio for any Fiscal Month during the twelve (12) most recent Fiscal Months, divided by (ii) the arithmetic average of the Dilution Ratios for such twelve (12) Fiscal Months.

“*Dollars*” and “*\$*” each mean the lawful currency of the United States of America.

“*Drawing Date*” has the meaning set forth in Section 3.04(a).

“*Eligible Assignee*” means (i) the LC Bank, each ~~Program Participant~~Lender or any of their Affiliates and (ii) any other financial institution of recognized standing having capital and surplus in excess of \$500,000,000.

“*Eligible Chapter 11 Receivable*” means, at any time of determination, a Pool Receivable:

(b) the excess (if any) of (i) the aggregate Outstanding Balance of all Eligible Receivables that are Eligible Unbilled Receivables, over (ii) the product of (x) 40.00%, *multiplied by* (y) the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool; *plus*

(c) the excess (if any) of (i) the aggregate Outstanding Balance of all Eligible Receivables the Obligor of which is the government of the United States of America or any agency, authority, department or instrumentality of the government of the United States of America, over (ii) the product of (x) 4.00%, *multiplied by* (y) the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool; *plus*

(d) the excess (if any) of (i) the aggregate Outstanding Balance of all Eligible Receivables that are Bill Plan Receivables, over (ii) the product of (x) 10.00%, *multiplied by* (y) the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool. Notwithstanding the foregoing, the Administrative Agent may at any time reduce the percentage set forth in this clause (d) (including to zero percent) upon five (5) Business Days' prior written notice to the Borrower.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended or otherwise modified from time to time.

~~“*Excluded Receivable*” means, from time to time, each Receivable identified as such on Schedule IV, as such Schedule may be amended, modified or supplemented from time to time with the written consent of the Borrower and the Administrative Agent.~~

“*Excluded Taxes*” means any of the following Taxes imposed on or with respect to an Affected Person or required to be withheld or deducted from a payment to an Affected Person: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of such Affected Person being organized under the laws of, or having its principal office or, in the case of the LC Bank or 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) in the case of the LC Bank or a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of the LC Bank or such Lender with respect to an applicable interest in any ~~Reimbursement Obligations~~ Capital or ~~the~~ Commitment pursuant to a law in effect on the date on which (i) the LC Bank ~~s~~ or such Lender makes a Loan or its Commitment arises or (ii) the LC Bank or such Lender changes its lending office, except in each case to the extent that amounts with respect to such Taxes were payable either to the LC Bank's or such Lender's assignor immediately before the LC Bank or such Lender became a party hereto or to the LC Bank or such Lender immediately before it changed its lending office; and (c) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“*Facility Limit*” means \$~~90,000,000~~ 125,000,000 as increased or reduced from time to time pursuant to Section 3.112.05, as applicable; *provided, however*, the Facility Limit shall not exceed \$150,000,000 at any time. References to the unused portion of the Facility Limit shall mean, at any time of determination, an amount equal to (x) the Facility Limit at such time, *minus* (y) the sum of (i) the ~~Outstanding Reimbursement Obligations~~ Aggregate Capital *plus* (ii) the LC Amount

at such time.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

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

“*Fee Letter*” has the meaning specified in Section 3.052.03(ba).

“*Fees*” has the meaning specified in Section 3.052.03(ba).

“*Final Payout Date*” means the date on or after the Termination Date when (i) the Outstanding Reimbursement Obligations Aggregate Capital and Aggregate Interest have been paid in full, (ii) the LC Amount has been reduced to zero (\$0) and no Letters of Credit issued hereunder remain outstanding and undrawn, (iii) all other Borrower Obligations shall have been paid in full, (iv) all other amounts owing to the Credit Parties and any other Borrower Indemnified Party or Affected Person hereunder and under the other Transaction Documents have been paid in full, and (v) all accrued Servicing Fees have been paid in full.

“*Financial Officer*” of any Person means, the chief executive officer, the chief financial officer, the chief accounting officer, the principal accounting officer, the controller, the treasurer or the assistant treasurer of such Person.

“*Fiscal Month*” means each fiscal month as specified on Exhibit B hereto.

“*GAAP*” means generally accepted accounting principles in the United States of America, consistently applied.

“*Governmental Acts*” has the meaning set forth in Section 3.09.

“*Governmental Authority*” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“*Group A Obligor*” means any Obligor with a short-term rating of at least: (a) “A-1” by S&P, or if such Obligor does not have a short-term rating from S&P, a rating of at least “A+” or better by S&P on such Obligor’s long-term senior unsecured and uncredit-enhanced debt securities, and (b) “P-1” by Moody’s, or if such Obligor does not have a short-term rating from Moody’s, a rating of at least “A1” or better by Moody’s on such Obligor’s long-term senior unsecured and uncredit-enhanced debt securities; *provided, however*, if such Obligor is rated by only one of such rating agencies, then such Obligor will be a “Group A Obligor” if it satisfies either clause (a) or clause (b) above. Notwithstanding the foregoing, any Obligor that is a

Subsidiary of an Obligor that satisfies the definition of “Group A Obligor” shall be deemed to be a Group A Obligor and shall be aggregated with the Obligor that satisfies such definition for the purposes of determining the “Concentration Reserve Percentage” and clause (a) of the definition of “Excess Concentration” for such Obligors, unless such deemed Obligor separately satisfies the definition of “Group B Obligor”, “Group C Obligor” or “Group D Obligor”, in which case such Obligor shall be separately treated as a Group B Obligor, a Group C Obligor or a Group D Obligor, as the case may be, and shall be aggregated and combined for such purposes with any of its Subsidiaries that are Obligors.

“*Group B Obligor*” means an Obligor that is not a Group A Obligor, with a short-term rating of at least: (a) “A-2” by S&P, or if such Obligor does not have a short-term rating from S&P, a rating of at least “BBB+” to “A” by S&P on such Obligor’s long-term senior unsecured and uncredit-enhanced debt securities, and (b) “P-2” by Moody’s, or if such Obligor does not have a short-term rating from Moody’s, a rating of at least “Baa1” to “A2” by Moody’s on such Obligor’s long-term senior unsecured and uncredit-enhanced debt securities; *provided, however*, if such Obligor is rated by only one of such rating agencies, then such Obligor will be a “Group B Obligor” if it satisfies either clause (a) or clause (b) above. Notwithstanding the foregoing, any Obligor that is a Subsidiary of an Obligor that satisfies the definition of “Group B Obligor” shall be deemed to be a Group B Obligor and shall be aggregated with the Obligor that satisfies such definition for the purposes of determining the “Concentration Reserve Percentage” and the definition of “Excess Concentration” for such Obligors, unless such deemed Obligor separately satisfies the definition of “Group A Obligor”, “Group C Obligor” or “Group D Obligor”, in which case such Obligor shall be separately treated as a Group A Obligor, a Group C Obligor or a Group D Obligor, as the case may be, and shall be aggregated and combined for such purposes with any of its Subsidiaries that are Obligors.

“*Group C Obligor*” means an Obligor that is not a Group A Obligor or a Group B Obligor, with a short-term rating of at least: (a) “A-3” by S&P, or if such Obligor does not have a short-term rating from S&P, a rating of at least “BBB-” to “BBB” by S&P on such Obligor’s long-term senior unsecured and uncredit-enhanced debt securities, and (b) “P-3” by Moody’s, or if such Obligor does not have a short-term rating from Moody’s, a rating of at least “Baa3” to “Baa2” by Moody’s on such Obligor’s long-term senior unsecured and uncredit-enhanced debt securities; *provided, however*, if such Obligor is rated by only one of such rating agencies, then such Obligor will be a “Group C Obligor” if it satisfies either clause (a) or clause (b) above. Notwithstanding the foregoing, any Obligor that is a Subsidiary of an Obligor that satisfies the definition of “Group C Obligor” shall be deemed to be a Group C Obligor and shall be aggregated with the Obligor that satisfies such definition for the purposes of determining the “Concentration Reserve Percentage” and the definition of “Excess Concentration” for such Obligors, unless such deemed Obligor separately satisfies the definition of “Group A Obligor”, “Group B Obligor” or “Group D Obligor”, in which case such Obligor shall be separately treated as a Group A Obligor, a Group B Obligor or a Group D Obligor, as the case may be, and shall be aggregated and combined for such purposes with any of its Subsidiaries that are Obligors.

“*Group D Obligor*” means any Obligor that is not a Group A Obligor, Group B Obligor or Group C Obligor; *provided*, that any Obligor that is not rated by either Moody’s or S&P shall be a Group D Obligor. Notwithstanding the foregoing, any Obligor that is a Subsidiary of an Obligor that satisfies the definition of “Group D Obligor” shall be deemed to be a Group D Obligor and

shall be aggregated with the Obligor that satisfies such definition for the purposes of determining the “Concentration Reserve Percentage” and the definition of “Excess Concentration” for such Obligors, unless such deemed Obligor separately satisfies the definition of “Group A Obligor”, “Group B Obligor” or “Group C Obligor”, in which case such Obligor shall be separately treated as a Group A Obligor, a Group B Obligor or a Group C Obligor, as the case may be, and shall be aggregated and combined for such purposes with any of its Subsidiaries that are Obligors.

“*Guaranty*” of any Person means any obligation of such Person guarantying or in effect guarantying any liability or obligation of any other Person in any manner, whether directly or indirectly, including any such liability arising by virtue of partnership agreements, including any agreement to indemnify or hold harmless any other Person, any performance bond or other suretyship arrangement and any other form of assurance against loss, except endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business.

“*Indemnified Taxes*” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower or any of its Affiliates under any Transaction Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

“*Independent Director*” has the meaning set forth in Section 8.03(c).

“*Information Package*” means a report, in substantially the form of Exhibit F.

“*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 of a Person, composition, marshaling of assets for creditors of a Person, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors, in each of clauses (a) and (b) undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

“*Intended Tax Treatment*” has the meaning set forth in Section 14.14.

“*Interest*” means, ~~for~~with respect to any ~~Reimbursement Obligation outstanding~~Capital during any Settlement Period (or portion thereof), the amount of interest accrued on such ~~Reimbursement Obligation~~Capital during such Settlement Period (or portion thereof) in accordance with Section 3.052.03.

“*Interest Rate*” means, (i) for any day with respect to any ~~Outstanding Reimbursement Obligation~~Capital, an interest rate per annum equal to the Term SOFR Rate plus the SOFR Adjustment (or if the Base Rate is applicable to the LC Bank or such Lender pursuant to Section 5.04, the Base Rate in effect on such day) and (ii) for any day while an Event of Default has occurred and is continuing shall be an interest rate per annum equal to the sum of 2.00% per annum plus the greater of (i) the Base Rate in effect on such day and (ii) the Term SOFR Rate plus the SOFR Adjustment; *provided, further*, that no provision of this Agreement shall require the payment or permit the collection of Interest in excess of the maximum permitted by Applicable Law; and *provided, further, however*, that Interest in respect of any ~~Outstanding Reimbursement Obligation~~Capital shall not be considered paid by any distribution to the extent that at any time all

or a portion of such distribution is rescinded or must otherwise be returned for any reason.

“*Investment Company Act*” means the Investment Company Act of 1940, as amended or otherwise modified from time to time.

“*Joinder Agreement*” means a joinder agreement, in substantially the form of Exhibit C to the Receivables Purchase Agreement (appropriately completed), that has been duly executed by the applicable Originator and the Borrower pursuant to which such Originator becomes a party to the Receivables Purchase Agreement and which sets forth certain terms and conditions applicable to such Originator under such Receivables Purchase Agreement.

“*LC Amount*” means at any time of determination, the sum of the amounts then available to be drawn under all outstanding Letters of Credit.

“*LC Bank*” has the meaning set forth in the preamble to this Agreement.

“*LC Collateral Account*” means the account at any time designated as the LC Collateral Account established and maintained with the LC Bank by the Administrative Agent (for the benefit of the LC Bank and the ~~Program Participants~~Lenders), or such other account as may be so designated as such by the Administrative Agent.

“*LC Fee Expectation*” has the meaning set forth in ~~Section 3.05~~Section 3.04(b).

“*LC Request*” means a letter in substantially the form of Exhibit A hereto executed and delivered by the Borrower to the Administrative Agent, the LC Bank and the ~~LC Bank~~Lenders pursuant to Section 3.02(a).

“*Lenders*” means PNC and each other Person that becomes a party to this Agreement in the capacity of a “Lender”.

“*Letter of Credit*” means any stand-~~by~~ letter of credit issued by the LC Bank at the request of the Borrower pursuant to this Agreement.

“*Letter of Credit Application*” has the meaning set forth in Section 3.02(a).

“*Loan*” means any loan made by a Lender pursuant to Section 2.02.

“*Loan Request*” means a letter in substantially the form of Exhibit A hereto executed and delivered by the Borrower to the Administrative Agent and each Lender pursuant to Section 2.02(a).

“*Lock-~~Box~~*” means each locked postal box with respect to which a Collection Account Bank has executed an Account Control Agreement pursuant to which it has been granted exclusive access for the purpose of retrieving and processing payments made on the Receivables and which is listed on Schedule II (as such schedule may be modified from time to time in connection with the addition or removal of any Lock-~~Box~~ in accordance with the terms hereof).

“*Loss Horizon Ratio*” means, at any time of determination, the ratio (expressed as a

percentage and rounded to the nearest 1/100 of 1%, with 5/1000th of 1% rounded upward) computed by dividing: (a) the sum of (i) the aggregate initial Outstanding Balance of all Pool Receivables (other than Unbilled Receivables) originated by the Originators during the seven (7) most recent Fiscal Months ending prior to such time of determination; plus (ii) the product of (x) the aggregate initial Outstanding Balance of all Pool Receivables (other than Unbilled Receivables) originated by the Originators during the preceding eighth (8th) most recent Fiscal Month ending prior to such time of determination multiplied by (y) 0.20; by (b) the Net Receivables Pool Balance as of such date.

“*Loss Reserve Percentage*” means, at any time of determination, the product of (a) 2.25, *multiplied by* (b) the highest arithmetic average of the Default Ratios for any three consecutive Fiscal Months during the twelve most recent Fiscal Months, *multiplied by* (c) the Loss Horizon Ratio.

“*Material Adverse Effect*” means, relative to any Person (*provided* that if no particular Person is specified, “Material Adverse Effect” shall be deemed to be relative to the Borrower, the Servicer and the Originators, individually and in the aggregate) with respect to any event or circumstance, a material adverse effect on any of the following:

- (a) the assets, operations, business or financial condition of such Person with its consolidated Subsidiaries, taken as a whole;
- (b) the ability of any such Person to perform its obligations under this Agreement or any other Transaction Document to which it is a party;
- (c) the validity or enforceability of this Agreement or any other Transaction Document, or the validity, enforceability or collectability of any material portion of the Pool Receivables;
- (d) the status, perfection, enforceability or priority of the Administrative Agent’s or the Borrower’s security interest in the Collateral; or
- (e) the rights and remedies of any Credit Party under the Transaction Documents or associated with its respective interest in the Collateral.

“*Maturity Date*” means the earlier to occur of (a) the date occurring twelve (12) months following the Scheduled Termination Date and (b) the date on which the “Termination Date” is declared or deemed to have occurred under Section 10.01.

“*Minimum Dilution Reserve Percentage*” means, at any time of determination, the product of (a) the average of the Dilution Ratios for the twelve most recent Fiscal Months ended that are covered by the most recently delivered Information Package, *multiplied by* (b) the Dilution Horizon Ratio for the most recent Fiscal Month ended that is covered by the most recently delivered Information Package.

“*Monthly Settlement Date*” means the 25th day of each calendar month (or if such day is not a Business Day, the next occurring Business Day).

“*Moody’s*” means Moody’s Investors Service, Inc. and any successor thereto that is a nationally recognized statistical rating organization.

“*Multiemployer Plan*” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower, the Servicer, any Originator, the Performance Guarantor or any of their respective ERISA Affiliates (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code) is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“*Net Receivables Pool Balance*” means, at any time of determination: (a) the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool, *minus* (b) the Excess Concentration.

“*Notice Date*” has the meaning set forth in Section 3.02(b).

“*Obligor*” means, with respect to any Receivable, the Person obligated to make payments pursuant to the Contract relating to such Receivable.

“*Obligor Percentage*” means, at any time of determination, for each Obligor, a fraction, expressed as a percentage, (a) the numerator of which is the aggregate Outstanding Balance of the Eligible Receivables of such Obligor *minus* the amount (if any) then included in the calculation of the Excess Concentration with respect to such Obligor and (b) the denominator of which is the aggregate Outstanding Balance of all Eligible Receivables at such time.

“*OFAC*” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“*Order*” has the meaning set forth in Section 3.10.

“*Originator*” and “*Originators*” means Davey Tree and each other Person identified as such in the Receivables Purchase Agreement, as the same may be modified from time to time by adding new Originators or removing Originators, in each case with the prior written consent of the Administrative Agent.

“*Other Connection Taxes*” means, with respect to any Affected Person, Taxes imposed as a result of a present or former connection between such Affected Person and the jurisdiction imposing such Tax (other than connections arising from such Affected Person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Transaction Document, or sold or assigned an interest in any ~~Reimbursement Obligation~~ ~~or~~ Capital, LC Amount or Transaction Document).

“*Other Taxes*” means any and all present or future stamp or documentary Taxes, charges or similar levies or fees arising from any payment made hereunder or from the execution, delivery, filing, recording or enforcement of, or otherwise in respect of, this Agreement, the other Transaction Documents and the other documents or agreements to be delivered hereunder or thereunder, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“*Outstanding Balance*” means, at any time of determination, with respect to any Receivable, the then outstanding principal balance thereof.

~~“*Outstanding Reimbursement Obligations*” means, at any time of determination, any Reimbursement Obligation that has not been paid in full.~~

“*Overnight Bank Funding Rate*” means for any day, the rate comprised of both overnight federal funds and overnight eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York (“NYFRB”), as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the NYFRB (or by such other recognized electronic source (such as Bloomberg) selected by the Administrative Agent for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Administrative Agent at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Borrower.

“*Participant*” has the meaning set forth in [Section 14.03\(a\)](#).

[“*Participant Register*” has the meaning set forth in Section 14.03\(e\).](#)

“*Participation Advance*” has the meaning set forth in [Section 3.04\(c\)](#).

“*Patriot Act*” has the meaning set forth in [Section 14.15](#).

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

“*Pension Plan*” means a pension plan as defined in Section 3(2) of ERISA that is subject to Title IV of ERISA with respect to which any Originator, the Borrower or any other member of the Controlled Group may have any liability, contingent or otherwise.

“*Performance Guarantor*” means Davey Tree.

“*Performance Guaranty*” means the Performance Guaranty, dated as of the Closing Date, by the Performance Guarantor in favor of the Administrative Agent for the benefit of the Secured Parties, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

“*Person*” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

“*PNC*” has the meaning set forth in the *preamble* to this Agreement.

“*Pool Receivable*” means a Receivable in the Receivables Pool.

~~“*Portion of Reimbursement Obligation*” means the portion of such Reimbursement Obligation being funded or maintained by the LC Bank by reference to a particular interest rate basis.~~

~~“*Program Participant*” means any financial institution that joins this Agreement (at the request of the Borrower) by executing a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, other than any such financial institution that ceases to be party hereto.~~

~~“*Program Participant Commitment*” means the maximum aggregate amount of participation interests which a Program Participant is obligated to purchase from the LC Bank with respect to the Letters of Credit and each drawing thereunder, as set forth on the applicable joinder agreement.~~

~~“*Ratable Share*” means (x) with respect to any Program Participant, (i) such Program Participant’s Program Participant Commitment, *divided by* (ii) the Commitment and (y) with respect to the LC Bank, (i) the difference between the Commitment and the aggregate Program Participant Commitments, *divided by* (ii) the Commitment; provided that if the Program Participant Commitment or Commitment has terminated or expired, Ratable Share shall be determined based upon the Program Participant Commitment and Commitment most recently in effect~~
“*Ratable Share*” means, at any time of determination, with respect to the LC Bank or any Lender, a fraction (expressed as a percentage), (a) the numerator of which is (i) prior to the termination of all Commitments hereunder, its Commitment at such time or (ii) if all Commitments hereunder have been terminated, the aggregate Capital funded by the LC Bank or such Lender at such time and (b) the denominator of which is (i) prior to the termination of all Commitments hereunder, the aggregate Commitments at such time or (ii) if all Commitments hereunder have been terminated, the Aggregate Capital at such time.

“*Receivable*” means any right to payment of a monetary obligation, whether or not earned by performance, owed to any Originator or the Borrower (as assignee of an Originator), whether constituting an account, chattel paper, payment intangible, instrument or general intangible, in each instance arising in connection with the sale of goods that have been or are to be sold or for services rendered or to be rendered, and includes, without limitation, the obligation to pay any finance charges, fees and other charges with respect thereto. Any such right to payment arising from any one transaction, including, without limitation, any such right to payment represented by an individual invoice or agreement, shall constitute a Receivable separate from a Receivable consisting of any such right to payment arising from any other transaction; ~~provided, however, that an Excluded Receivable shall not be a “Receivable” hereunder or under the Transaction Documents.~~

“*Receivables Pool*” means, at any time of determination, all of the then outstanding Receivables transferred (or purported to be transferred) to the Borrower pursuant to the Receivables Purchase Agreement prior to the Termination Date.

“~~Required Program-Participants Lenders~~” means: (a) if there exists fewer than two (2) ~~Program Participants Lenders~~, all ~~Program Participants Lenders~~ and the LC Bank; and (b) if there exist two (2) or more ~~Program Participants, Program Participants Lenders, Lenders~~ together with the LC Bank, having aggregate Ratable Shares greater than 50%.

“*Required Capital Amount*” means \$6,000,000.

“*Restricted Payments*” has the meaning set forth in Section 8.01(s).

“*S&P*” means Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business, and any successor thereto that is a nationally recognized statistical rating organization.

“*Sanctioned Country*” means a country subject to a sanctions program identified on the list maintained by OFAC and available at: http://www.treasury.gov/resource_center/sanctions/Programs/Pages/Programs.aspx, or as otherwise published from time to time.

“*Sanctioned Person*” means (i) A person named on the list of “Specially Designated Nationals” or “Blocked Persons” maintained by OFAC available at: http://www.treasury.gov/resource_center/sanctions/SDN_List/Pages/default.aspx, or as otherwise published from time to time, (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC, or (iii) any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-~~T~~errorism Law.

“*Scheduled Termination Date*” means July ~~21~~20, ~~2024~~2025.

“*SEC*” means the U.S. Securities and Exchange Commission or any governmental agencies substituted therefor.

“*Secured Parties*” means each Credit Party, each Borrower Indemnified Party and each Affected Person.

“*Securities Act*” means the Securities Act of 1933, as amended or otherwise modified from time to time.

“*Servicer*” has the meaning set forth in the preamble to this Agreement.

“*Servicer Indemnified Amount*” has the meaning set forth in Section 13.02(a).

“*Servicer Indemnified Party*” has the meaning set forth in Section 13.02(a).

“*Servicing Fee*” means the fee referred to in Section 9.06(a) of this Agreement.

“*Servicing Fee Rate*” means the rate referred to in Section 9.06(a) of this Agreement.

“*Settlement Date*” means (i) prior to an Event of Default that is continuing or the occurrence of the Termination Date, the Monthly Settlement Date and (ii) during the occurrence and continuance of an Event of Default or on and after the Termination Date, each day selected from time to time by the Administrative Agent (with the consent or at the direction of the LC Bank and Required [Program Participants Lenders](#)) (it being understood that the Administrative Agent (with the consent or at the direction of the LC Bank and Required [Program Participants Lenders](#)) may select such Settlement Date to occur as frequently as daily), or, in the absence of such selection, the Monthly Settlement Date.

“*Settlement Period*” means: (a) before the Termination Date: (i) initially the period commencing on the Closing Date and ending on (but not including) the next Monthly Settlement Date and (ii) thereafter, each period commencing on such Monthly Settlement Date and ending on (but not including) the next Monthly Settlement Date and (b) on and after the Termination Date, such period (including a period of one day) as shall be selected from time to time by the Administrative Agent (with the consent or at the direction of the LC Bank and Required [Program Participants Lenders](#)) or, in the absence of any such selection, each period of thirty (30) days from the last day of the preceding Settlement Period.

“*Six-Month Average Days’ Sales Outstanding*” means, for any Fiscal Month, an amount computed as of the last day of such Fiscal Month equal to: (a) the average of the aggregate Outstanding Balance of all Pool Receivables (other than Unbilled Receivables) as of the last day of each of the six most recent Fiscal Months ended on the last day of such Fiscal Month, *divided by* (b) an amount equal to (i) the aggregate initial Outstanding Balance of all Pool Receivables (other than Unbilled Receivables) originated by the Originators during the six most recent Fiscal Months ended on the last day of such Fiscal Month, *divided by* (ii) 180.

“*SOFR*” means, for any day, a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“*SOFR Adjustment*” means an interest rate per annum equal to ten basis points (0.10%).

“*SOFR Floor*” means a rate of interest per annum equal to 0 basis points (0.00%).

“*SOFR Reserve Percentage*” means, for any day, the maximum effective percentage in effect on such day, if any, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including, without limitation, supplemental, marginal and emergency reserve requirements) with respect to SOFR funding.

“*Solvent*” means, with respect to any Person and as of any particular date, (i) the present fair market value (or present fair saleable value) of the assets of such Person is not less than the total amount required to pay the probable liabilities of such Person on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured, (ii) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business, (iii) such Person is not incurring debts or liabilities beyond its ability to pay such debts and liabilities as they mature and (iv) such Person is not engaged in any business or transaction, and is not about to engage in

be deemed to be the SOFR Floor. The Term SOFR Rate shall be adjusted automatically without notice to the Borrower on and as of the effective date of any change in the SOFR Reserve Percentage.

“*Term SOFR Reference Rate*” means the forward-looking term rate based on SOFR.

“*Termination Date*” means the earliest to occur of (a) the Scheduled Termination Date, (b) the date on which the “Termination Date” is declared or deemed to have occurred under Section 10.01 and (c) the date selected by the Borrower on which all Commitments have been reduced to zero pursuant to Section 3.11.

~~“*Total Adjusted Usage*” means, at any time of determination, the sum of (x) the Outstanding Reimbursement Obligations plus (y) the Adjusted LC Amount at such time~~2.05.

“*Total Reserves*” means, at any time of determination, the product of (a) the sum of (i) the Yield Reserve Percentage, plus (ii) the greater of (x) the sum of the Concentration Reserve Percentage plus the Minimum Dilution Reserve Percentage and (y) the sum of the Dilution Reserve Percentage plus the Loss Reserve Percentage, multiplied by (b) the Net Receivables Pool Balance on such day.

~~“*Total Usage*” means, at any time of determination, the sum of (x) the Outstanding Reimbursement Obligations plus (y) the LC Amount at such time.~~

“*Transaction Documents*” means this Agreement, the Receivables Purchase Agreement and each Joinder Agreement thereto, the Account Control Agreements, the Fee Letter, each Subordinated Note, the Performance Guaranty, the Letter of Credit Applications and all other certificates, instruments, UCC financing statements, reports, notices, agreements and documents executed or delivered under or in connection with this Agreement, in each case as the same may be amended, supplemented or otherwise modified from time to time in accordance with this Agreement.

“*UCC*” means the Uniform Commercial Code as from time to time in effect in the applicable jurisdiction.

“*Unbilled Receivable*” means, at any time, any Receivable as to which the invoice or bill with respect thereto has not yet been sent to the Obligor thereof.

“*Unmatured Event of Default*” means an event that but for notice or lapse of time or both would constitute an Event of Default.

“*U.S. Government Securities Business Day*” means any day except for (a) a Saturday or Sunday or (b) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“*U.S. Obligor*” means an Obligor that is a corporation or other business organization and is organized under the laws of the United States of America (or of a United States of America territory, district, state, commonwealth, or possession, including, without limitation, Puerto Rico

time amended, restated or supplemented or as the terms of such agreement are waived or modified in accordance with its terms; (g) references to any Person include that Person's permitted successors and assigns; (h) headings are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof; (i) unless otherwise provided, in the calculation of time from a specified date to a later specified date, the term "from" means "from and including", and the terms "to" and "until" each means "to but excluding"; (j) terms in one gender include the parallel terms in the neuter and opposite gender; (k) references to any amount as on deposit or outstanding on any particular date means such amount at the close of business on such day, and (l) the term "or" is not exclusive.

Section 1.03. SOFR Notifications. Section 5.04(c) of this Agreement provides a mechanism for determining an alternative rate of interest in the event that the Term SOFR Rate is no longer available or in certain other circumstances. The Administrative Agent does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the Term SOFR Rate or with respect to any alternative or successor rate thereto, or replacement rate therefor.

Section 1.04. Conforming Changes Relating to SOFR. With respect to the Term SOFR Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Transaction Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Transaction Document; provided that, with respect to any such amendment effected, the Administrative Agent shall provide notice to the Borrower, the LC Bank and the ~~Program Participants~~ Lenders of each such amendment implementing such Conforming Changes reasonably promptly after such amendment becomes effective.

ARTICLE II

~~{RESERVED}~~

TERMS OF THE LOANS

Section 2.01. Loan Facility. Upon a request by the Borrower pursuant to Section 2.02, and on the terms and subject to the conditions hereinafter set forth, each Lender, severally and not jointly, agrees to make Loans to the Borrower on a revolving basis, ratably in accordance with its Commitment from time to time prior to the Termination Date. Under no circumstances shall any Lender be obligated to make any such Loan if, after giving effect to such Loan:

(a) the Aggregate Capital plus the LC Amount would exceed the Facility Limit at such time; or

(b) the Aggregate Capital plus the Adjusted LC Amount would exceed the Borrowing Base at such time.

Section 2.02. Making Loans; Repayment of Loans. (a) Each Loan hereunder shall be made at the written request from the Borrower to the Administrative Agent and each Lender in the form

of a Loan Request attached hereto as Exhibit A; provided that, at any time when PNC (or an Affiliate thereof) is both the Administrative Agent and the sole Lender hereunder, if the Borrower enters into a separate written agreement with the Administrative Agent regarding Administrative Agent's PINACLE® auto-advance service (or any similar or replacement electronic loan administration service implemented by the Administrative Agent), then any request for a Loan made using such service shall constitute a Loan Request, and each Loan made pursuant to such service shall be made on the date such Loan Request is received by the Administrative Agent. Otherwise, each such request for a Loan shall be made no later than 12:00 p.m. Eastern Time on the proposed date of such Loan (it being understood that any such request made after such time shall be deemed to have been made on the following Business Day) and shall specify (i) the amount of the Loan(s) requested (which shall not be less than \$1,000,000 and shall be an integral multiple of \$100,000), (ii) the allocation of such amount among the Lenders (which shall be ratable based on the Commitments), (iii) the account to which the proceeds of such Loan shall be distributed and (iv) the date such requested Loan is to be made (which shall be a Business Day).

(b) On the requested date of each Loan, the Lenders shall, upon satisfaction of the applicable conditions set forth in Article VI and pursuant to the other conditions set forth in this Article II, make available to the Borrower in same day funds an aggregate amount equal to the amount of such Loans requested, at the account set forth in the related Loan Request.

(c) Each Lender's obligation shall be several, such that the failure of any Lender to make available to the Borrower any funds in connection with any Loan shall not relieve any other Lender of its obligation, if any, hereunder to make funds available on the date such Loans are requested (it being understood, that no Lender shall be responsible for the failure of any other Lender to make funds available to the Borrower in connection with any Loan hereunder).

(d) The Borrower shall repay in full the Aggregate Capital and the Adjusted LC Amount, together with all accrued and unpaid Interest, Fees and other Borrower Obligations, of each Lender on the Maturity Date. Prior thereto, the Borrower shall, on each Settlement Date, make a prepayment of the Aggregate Capital to the extent required to eliminate any Borrowing Base Deficit and as otherwise required under Section 4.01. Notwithstanding the foregoing, the Borrower, in its discretion, shall have the right to make a prepayment, in whole or in part, of the Aggregate Capital (i) at any time when PNC (or an Affiliate thereof) is both the Administrative Agent and the sole Lender hereunder, and to the extent the Borrower has entered into a separate written agreement with the Administrative Agent regarding Administrative Agent's PINACLE® auto-advance service (or any similar or replacement electronic loan administration service implemented by the Administrative Agent) pursuant to Section 2.02(a) hereof, on any Business Day, or (ii) upon same-day written notice no later than 12:00 p.m. Eastern Time on the proposed date of such prepayment (it being understood that any such notice made after such time shall be deemed to have been made on the following Business Day) to the Administrative Agent and each Lender; provided, however, that each such prepayment shall be in a minimum aggregate amount of \$1,000,000 and shall be an integral multiple of \$100,000.

(e) In connection with any reduction of the Commitments, the Borrower shall remit to the Administrative Agent (i) instructions regarding such reduction and (ii) for payment to the Lenders, cash in an amount sufficient to pay (a) Capital of the LC Bank and each Lender in

excess of its Commitment as proposed to be reduced and (b) all other outstanding Borrower Obligations with respect to such reduction (determined based on the ratio of the reduction of the Commitments being effected to the amount of the Commitments prior to such reduction or, if the Administrative Agent reasonably determines that any portion of the outstanding Borrower Obligations is allocable solely to that portion of the Commitments being reduced or has arisen solely as a result of such reduction, all of such portion) including, without duplication, any associated Breakage Fees. Upon receipt of any such amounts, the Administrative Agent shall apply such amounts first to the reduction of the Capital, and second to the payment of the remaining outstanding Borrower Obligations with respect to such reduction, including any Breakage Fees, by paying such amounts to the Lenders.

Section 2.03. Interest and Fees . (a) On each Settlement Date, the Borrower shall, in accordance with the terms and priorities for payment set forth in Section 4.01, pay to the LC Bank, the Lenders, the Structuring Agent and the Administrative Agent certain fees (collectively, the “Fees”) in the amounts set forth in the fee letter agreements from time to time entered into, among the Borrower, the applicable Lenders and/or the Administrative Agent (each such fee letter agreement, as amended, restated, supplemented or otherwise modified from time to time, collectively being referred to herein as the “Fee Letter”).

(b) The Capital shall accrue Interest on each day when such Capital remains outstanding at the then applicable Interest Rate. The Borrower shall pay all Interest, Fees and Breakage Fees accrued during each Settlement Period on the immediately following Settlement Date in accordance with the terms and priorities for payment set forth in Section 4.01.

Section 2.04. Records of Loans and Participation Advances. Each Lender shall record in its records, the date and amount of Capital and each Participation Advance made by such Lender, the Interest Rate with respect thereto, the Interest accrued thereon and each repayment and payment thereof. Subject to Section 14.03(b), such records shall be conclusive and binding absent manifest error. The failure to so record any such information or any error in so recording any such information shall not, however, limit or otherwise affect the obligations of the Borrower hereunder or under the other Transaction Documents to repay the Capital, together with all Interest accruing thereon and all other Borrower Obligations.

Section 2.05. Changes in Facility Limit. (a) The Borrower may, on any Business Day prior to the Termination Date, request an increase to the Facility Limit by delivering to the Administrative Agent a request substantially in the form attached as Exhibit I hereto (each, an “Aggregate Facility Limit Increase Request”) or in such other form as may be acceptable to the Administrative Agent at least ten (10) Business Days prior to the desired effective date of such increase (the “Aggregate Facility Limit Increase”); provided, however, that (i) any increase of the Facility Limit will require the consent and approval of the Administrative Agent, the LC Bank and the Lenders in their respective sole discretion, (ii) any incremental increase of the Facility Limit shall be in an amount not less than \$1,000,000 and shall be in an integral multiple of \$100,000 in excess thereof, (iii) no Unmatured Event of Default or Event of Default shall have occurred and be continuing at the time of the request or the effective date of the Aggregate Facility Limit Increase, and (iv) all conditions precedent to the making of any Credit Extension contained in Section 6.02 hereof shall be satisfied immediately after giving effect to such Aggregate Facility Limit Increase. The effective date of an Aggregate Facility Limit Increase shall be agreed upon by the Borrower,

the Administrative Agent, the LC Bank and the Lenders in the Aggregate Facility Limit Increase Request. The Borrower agrees to pay any reasonable expenses incurred by the Administrative Agent, the LC Bank and the Lenders relating to any Aggregate Facility Limit Increase. Notwithstanding anything herein to the contrary, neither the LC Bank nor any Lender shall have any obligation to increase its Commitment, and no Commitment of the LC Bank or Lender shall be increased without its consent thereto, and the LC Bank and each Lender may at its option, unconditionally and without cause, decline to increase its Commitment.

(b) In connection with any reduction of the Facility Limit, the Borrower shall remit to the Administrative Agent (i) instructions regarding such reduction, (ii) for payment to the LC Bank or any Lender, cash in an amount sufficient to pay (x) any Loans and (y) all other outstanding Borrower Obligations with respect to such reduction (determined based on the ratio of the reduction of the Facility Limit being effected to the amount of the Facility Limit prior to such reduction or, if the Administrative Agent reasonably determines that any portion of the outstanding Borrower Obligations is allocable solely to that portion of the Facility Limit being reduced or has arisen solely as a result of such reduction, all of such portion). Upon receipt of any such amounts, the Administrative Agent shall apply such amounts first, pro rata, to the outstanding Loans, and second, to the payment of the remaining outstanding Borrower Obligations with respect to such reduction by paying such amounts to the Credit Party entitled thereto.

ARTICLE III

LETTER OF CREDIT FACILITY

Section 3.01. Letters of Credit. (a) Subject to the terms and conditions hereof and the satisfaction of the applicable conditions set forth in Article VI, the LC Bank shall issue or cause the issuance of Letters of Credit on behalf of the Borrower (and, if applicable, on behalf of, or for the account of, an Originator or an Affiliate of such Originator in favor of such beneficiaries as such Originator or an Affiliate of such Originator may elect with the consent of the Borrower); *provided, however*, that the LC Bank will not be required to issue or cause to be issued any Letters of Credit to the extent that after giving effect thereto:

(i) the ~~Total Usage~~ Aggregate Capital plus the LC Amount would exceed the Facility Limit at such time; or

(ii) the ~~Total~~ Aggregate Capital plus the Adjusted ~~Usage~~ LC Amount would exceed the Borrowing Base at such time.

(b) Interest shall accrue on all amounts drawn under Letters of Credit for each day on and after the applicable Drawing Date so long as such drawn amounts shall have not been reimbursed to the LC Bank in accordance with Section ~~3.05~~2.03(eb).

Section 3.02. Issuance of Letters of Credit. (a) The Borrower may request the LC Bank, upon three (3) Business Days' prior written notice submitted on or before 1:00 p.m. (New York City time), to issue a Letter of Credit by delivering to the Administrative Agent, each Lender and the LC Bank, the LC Bank's form of Letter of Credit Application (the "*Letter of Credit Application*"), substantially in the form of Exhibit D attached hereto and an LC Request, in each case completed to the satisfaction of the Administrative Agent and the LC Bank; and such other

certificates, documents and other papers and information as the Administrative Agent, the LC Bank or any ~~Program Participant~~Lender may reasonably request. The LC Bank agrees to issue amendments to the Letters of Credit increasing the amount, or extending the expiration date, thereof at the request of the Borrower subject to the conditions of Section 6.02 and the other terms of this Article III.

(b) Each Letter of Credit shall, among other things, (i) provide for the payment of sight drafts or other written demands for payment when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein and (ii) have an expiry date not later than twelve (12) months after such Letter of Credit's date of issuance, extension or renewal, as the case may be, and in no event later than twelve (12) months after the Scheduled Termination Date. The terms of each Letter of Credit may include customary "evergreen" provisions providing that such Letter of Credit's expiry date shall automatically be extended for additional periods not to exceed twelve (12) months unless, not less than thirty (30) days (or such longer period as may be specified in such Letter of Credit) (the "Notice Date") prior to the applicable expiry date, the LC Bank delivers written notice to the beneficiary thereof declining such extension; *provided, however*, that if (x) any such extension would cause the expiry date of such Letter of Credit to occur after the date that is twelve (12) months after the Scheduled Termination Date or (y) the LC Bank determines that any condition precedent (including, without limitation, those set forth in Sections 3.01 and Article VI) to issuing such Letter of Credit hereunder are not satisfied (other than any such condition requiring the Borrower to submit an LC Request or Letter of Credit Application in respect thereof), then the LC Bank, in the case of clause (x) above, may (or, at the written direction of any Lender, shall) or, in the case of clause (y) above, shall, use reasonable efforts in accordance with (and to the extent permitted by) the terms of such Letter of Credit to prevent the extension of such expiry date (including notifying the Borrower and the beneficiary of such Letter of Credit in writing prior to the Notice Date that such expiry date will not be so extended). Each Letter of Credit shall be subject either to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600, and any amendments or revisions thereof adhered to by the LC Bank or the International Standby Practices (ISP98--International Chamber of Commerce Publication Number 590), and any amendments or revisions thereof adhered to by the LC Bank, as determined by the LC Bank.

(c) *Section 3.03. Requirements For Issuance of Letters of Credit.* The Borrower shall authorize and direct the LC Bank to name the Borrower, an Originator or an Affiliate of an Originator as the "Applicant" or "Account Party" of each Letter of Credit.

Section 3.04. Disbursements, Reimbursement. (a) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the LC Bank will promptly notify the Administrative Agent, the ~~Program Participants~~Lenders and the Borrower of such request. The Borrower shall reimburse (such obligation to reimburse the LC Bank shall sometimes be referred to as a "Reimbursement Obligation") the LC Bank prior to noon (New York City time), on each date that an amount is paid by the LC Bank under any Letter of Credit (each such date, a "Drawing Date") in an amount equal to the amount so paid by the LC Bank if the Borrower shall have received notice of such payment prior to 10:00 a.m. (New York City time), on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than noon (New York City time), on the Business Day immediately

following the day that the Borrower receives such notice, *provided* that failure to receive any such notice shall not affect the Borrower's obligation to honor its Reimbursement Obligation on a timely basis and pay any interest that accrues upon failure to do so. The Borrower shall honor its Reimbursement Obligation *first*, from funds on deposit in the LC Collateral Account, if any, and, *second*, from its own funds. In connection with any drawing under a Letter of Credit, to the extent the Borrower has not reimbursed the LC Bank any Reimbursement Obligations by noon (New York City time) on the second Business Day occurring after the applicable Drawing Date, the Borrower shall be deemed to have automatically requested a Loan pursuant to Section 2.02(a) at such time, in an amount equal to the amount necessary to pay any Reimbursement Obligations owing to the LC Bank without the need for the delivery of any Loan Request and without giving effect to any notice requirements applicable to requests for Loans hereunder. The Administrative Agent and the Lenders hereby waive any notice requirements set forth in Section 2.02 in connection with any such Loan that is automatically requested in order to pay any Reimbursement Obligations owing to the LC Bank. Any notice given by the LC Bank pursuant to this Section may be oral if promptly confirmed in writing; *provided* that the lack of such a prompt written confirmation shall not affect the conclusiveness or binding effect of such oral notice.

(b) If any Letters of Credit are outstanding and undrawn on the Termination Date, without limiting any rights or remedies contained in Section 10.01 or any other Transaction Document, the LC Collateral Account shall be funded from Collections (or, in the Borrower's sole discretion, by other funds available to the Borrower) in an amount equal to the aggregate undrawn face amount of such Letters of Credit plus all related fees to accrue through the stated expiration dates thereof (such fees to accrue, as reasonably estimated by the LC Bank, the "*LC Fee Expectation*").

(c) Immediately upon the issuance of each Letter of Credit, each **Program Participant Lender** shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the LC Bank a participation in such Letter of Credit and each drawing thereunder in an amount equal to such **Program Participant Lender**'s Ratable Share of the maximum amount available to be drawn under such Letter of Credit and the amount of such drawing, respectively. Each **Program Participant Lender** shall upon any notice pursuant to Section 3.04(a) above make available to the LC Bank an amount in immediately available funds equal to its Ratable Share of the amount of the applicable drawing under a Letter of Credit. Each **Program Participant Lender**'s payment to the LC Bank pursuant to this Section 3.04 shall be deemed to be a payment in respect of its participation in such Letter of Credit (each, a "*Participation Advance*") from such **Program Participant Lender** in satisfaction of its participation obligation under this Section 3.04.

(d) Repayment of Participation Advances.

(i) Upon (and only upon) receipt by the Administrative Agent for the account of the LC Bank of immediately available funds from the Borrower (A) in reimbursement of any payment made by the LC Bank under the Letter of Credit with respect to which any **Program Participant Lender** has made a Participation Advance to the Administrative Agent, or (B) in payment of interest on such a payment made by the LC Bank under such a Letter of Credit, the Administrative Agent on behalf of the LC Bank will pay to each **Program Participant Lender**, in the same funds as those received by the Administrative Agent, the amount of such **Program Participant Lender**'s Ratable Share of such funds, except the

Administrative Agent shall retain for the account of the LC Bank the amount of the Ratable Share of such funds of any ~~Program Participant~~Lender that did not make a Participation Advance in respect of such payment by the LC Bank and the LC Bank's Ratable Share of such funds.

(ii) If the Administrative Agent is required at any time to return to Borrower, or to a trustee, receiver, liquidator, custodian, or any official in any Insolvency Proceeding, any portion of any payment made by Borrower to the Administrative Agent for the account of the LC Bank pursuant to this Section in reimbursement of a payment made under any Letter of Credit or interest or fees thereon, each ~~Program Participant~~Lender shall, on demand of the Administrative Agent, forthwith return to the Administrative Agent for the account of the LC Bank the amount of its Ratable Share of any amounts so returned by the Administrative Agent plus interest thereon from the date such demand is made to the date such amounts are returned by such ~~Program Participant~~Lender to the Administrative Agent, at a rate per annum equal to the Overnight Bank Funding Rate in effect from time to time.

(e) Nature of Participation Advance Obligations. Each ~~Program Participant~~Lender's obligation in accordance with this Agreement to make Participation Advances, as contemplated by Section 3.04(c), as a result of a drawing under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Section 3.04(e) under all circumstances, including the following circumstances:

(i) any set-off, counterclaim, recoupment, defense or other right which such ~~Program Participant~~Lender may have against the LC Bank or any of its Affiliates, the Borrower or any other Person for any reason whatsoever, or which Borrower may have against the LC Bank or any of its Affiliates, any ~~Program Participant~~Lender or any other Person for any reason whatsoever;

(ii) the failure of Borrower or any other Person to comply with the conditions specified in Sections 3.01 or 6.02, it being acknowledged that such conditions are not required for the obligation of the ~~Program Participants~~Lenders to make Participation Advances under Section 3.04(c);

(iii) any lack of validity or enforceability of any Letter of Credit;

(iv) any claim of breach of warranty that might be made by Borrower or any ~~Program Participant~~Lender against any beneficiary of a Letter of Credit, or the existence of any claim, set-off, recoupment, counterclaim, cross claim, defense or other right which Borrower or any ~~Program Participant~~Lender may have at any time against a beneficiary, successor beneficiary any transferee or assignee of any Letter of Credit or the proceeds thereof (or any Persons for whom any such transferee may be acting), the LC Bank or its Affiliates or any ~~Program Participant~~Lender or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between Borrower and the beneficiary for which any Letter of Credit was procured);

(v) the lack of power or authority of any signer of (or any defect in or forgery of any signature or endorsement on) or the form of or lack of validity, sufficiency, accuracy, enforceability or genuineness of any draft, demand, instrument, certificate or other document presented under or in connection with any Letter of Credit, or any fraud or alleged fraud in connection with any Letter of Credit, or the transport of any property or provision of services relating to a Letter of Credit, in each case even if the LC Bank or any of its Affiliates has been notified thereof;

(vi) payment by the LC Bank or any of its Affiliates under any Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit;

(vii) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(viii) any failure by the LC Bank or any of its Affiliates to issue any Letter of Credit in the form requested by Borrower, unless the LC Bank has received written notice from Borrower of such failure within three (3) Business Days after the LC Bank shall have furnished Borrower and the Administrative Agent a copy of such Letter of Credit and such error is material and no drawing has been made thereon prior to receipt of such notice;

(ix) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower;

(x) any breach of this Agreement or any other Transaction Document by any party thereto;

(xi) the occurrence or continuance of an Insolvency Proceeding with respect to Borrower;

(xii) the fact that an Event of Default or a Unmatured Default shall have occurred and be continuing;

(xiii) the fact that the Scheduled Termination Date shall have passed or this Agreement or the Commitments hereunder shall have been terminated; and

(xiv) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

~~Section 3.05. *Maturity Date; Interest and Fees; Reimbursement Obligations.* (a) On the Maturity Date, the Total Usage shall be zero (\$0) and all outstanding Borrower Obligations shall be paid in full. Reserved.~~

~~(b) On each Settlement Date, the Borrower shall, in accordance with the terms and priorities for payment set forth in Section 4.01, pay to the LC Bank, Program Participants, the~~

~~Structuring Agent and the Administrative Agent certain fees (collectively, the “Fees”) in the amounts set forth in the fee letter agreements from time to time entered into, among the Borrower, the LC Bank, the Program Participants and/or the Administrative Agent and the Structuring Agent (each such fee letter agreement, as amended, restated, supplemented or otherwise modified from time to time, collectively being referred to herein as the “Fee Letter”).~~

~~— (c) — Each outstanding Reimbursement Obligation shall accrue interest on each day when such Reimbursement Obligation remains outstanding at the Interest Rate then applicable thereto. The Borrower shall pay all Interest and Fees accrued during each Settlement Period on the immediately following Settlement Date in accordance with the terms and priorities for payment set forth in Section 4.01.~~

~~— (d) — The LC Bank shall record in its records, the date and amount of each Reimbursement Obligation hereunder, the interest rate with respect thereto, the Interest accrued thereon and each payment thereof. Subject to Section 14.03(b), such records shall be conclusive and binding absent manifest error. The failure to so record any such information or any error in so recording any such information shall not, however, limit or otherwise affect the obligations of the Borrower hereunder or under the other Transaction Documents to repay the Reimbursement Obligations, together with all Interest accruing thereon and all other Borrower Obligations.~~

Section 3.06. Documentation. The Borrower agrees to be bound by the terms of the Letter of Credit Application and by the LC Bank’s interpretations of any Letter of Credit issued for the Borrower and by the LC Bank’s written regulations and customary practices relating to letters of credit, though the LC Bank’s interpretation of such regulations and practices may be different from the Borrower’s own. In the event of a conflict between the Letter of Credit Application and this Agreement, this Agreement shall govern. The LC Bank shall not be liable for any error, negligence and/or mistakes, whether of omission or commission, in following the Borrower’s instructions or those contained in the Letters of Credit or any modifications, amendments or supplements thereto.

Section 3.07. Determination to Honor Drawing Request. In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, the LC Bank shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit and that any other drawing condition appearing on the face of such Letter of Credit has been satisfied in the manner so set forth.

Section 3.08. Nature of Reimbursement Obligations. The obligations of the Borrower to reimburse the LC Bank upon a draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement and under all circumstances, including the following circumstances:

- (i) any set-off, counterclaim, recoupment, defense or other right which the Borrower may have against any Credit Party, the Servicer, an Originator, the Performance Guarantor or any other Person for any reason whatsoever;
- (ii) the failure of the Borrower or any other Person to comply with the

conditions set forth in this Agreement for [making of a Loan](#), requests for Letters of Credit or otherwise;

(iii) any lack of validity or enforceability of any Letter of Credit or any set-off, counterclaim, recoupment, defense or other right which the Borrower, the Performance Guarantor, the Servicer, an Originator or any Affiliate thereof on behalf of which a Letter of Credit has been issued may have against any Credit Party or any other Person for any reason whatsoever;

(iv) any claim of breach of warranty that might be made by the Borrower, an Originator, the Servicer or any Affiliate thereof, the LC Bank or any **Program Participant Lender** against the beneficiary of a Letter of Credit, or the existence of any claim, set-off, defense or other right which the Borrower, the LC Bank or any **Program Participant Lender** may have at any time against a beneficiary, any successor beneficiary or any transferee of any Letter of Credit or the proceeds thereof (or any Persons for whom any such transferee may be acting), the LC Bank, any **Program Participant Lender** or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or any Affiliates of the Borrower and the beneficiary for which any Letter of Credit was procured);

(v) the lack of power or authority of any signer of, or lack of validity, sufficiency, accuracy, enforceability or genuineness of, any draft, demand, instrument, certificate or other document presented under any Letter of Credit, or any such draft, demand, instrument, certificate or other document proving to be forged, fraudulent, invalid, defective or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, even if the Administrative Agent, the LC Bank or any **Program Participant Lender** has been notified thereof;

(vi) payment by the LC Bank under any Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit;

(vii) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(viii) any failure by the LC Bank or any of the LC Bank's Affiliates to issue any Letter of Credit in the form requested by the Borrower;

(ix) any Material Adverse Effect;

(x) any breach of this Agreement or any other Transaction Document by any party thereto;

(xi) the occurrence or continuance of an Insolvency Proceeding with respect to the Borrower, the Performance Guarantor, any Originator or any Affiliate thereof;

punitive, exemplary or special damages or expenses (including without limitation Attorney Costs), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

Without limiting the generality of the foregoing, the Credit Parties and each of their respective Affiliates (i) may rely on any written communication believed in good faith by such Person to have been authorized or given by or on behalf of the applicant for a Letter of Credit; (ii) may honor any presentation if the documents presented appear on their face to comply with the terms and conditions of the relevant Letter of Credit; (iii) may honor a previously dishonored presentation under a Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by the LC Bank or its Affiliates; (iv) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; (v) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located; and (vi) may settle or adjust any claim or demand made on the Credit Parties or their respective Affiliates, in any way related to any order issued at the applicant's request to an air carrier, a letter of guarantee or of indemnity issued to a carrier or any similar document (each, an "Order") and may honor any drawing in connection with any Letter of Credit that is the subject of such Order, notwithstanding that any drafts or other documents presented in connection with such Letter of Credit fail to conform in any way with such Letter of Credit.

In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by the LC Bank under or in connection with any Letter of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith and without gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction, shall not put the LC Bank under any resulting liability to the Borrower, any Credit Party or any other Person.

~~—Section 3.11. Changes in Facility Limit. (a) The Borrower may, on any Business Day prior to the Termination Date, request an increase to the Facility Limit by delivering to the Administrative Agent a request substantially in the form attached as Exhibit I hereto (each, an "Aggregate Facility Limit Increase Request") or in such other form as may be acceptable to the Administrative Agent at least ten (10) Business Days prior to the desired effective date of such increase (the "Aggregate Facility Limit Increase"); provided, however, that (i) any increase of the Facility Limit will require the consent and approval of the Administrative Agent, the LC Bank, the Program Participants in their respective sole discretion, (ii) any incremental increase of the Facility Limit shall be in an amount not less than \$1,000,000 and shall be in an integral multiple of \$100,000 in excess thereof, (iii) no Unmatured Event of Default or Event of Default shall have occurred and be continuing at the time of the request or the effective date of the Aggregate Facility Limit Increase, and (iv) all conditions precedent to the making of any Credit Extension contained in Section 6.02 hereof shall be satisfied immediately after giving effect to such Aggregate Facility Limit Increase. The effective date of an Aggregate Facility Limit Increase shall be agreed upon by the Borrower, the Administrative Agent, the LC Bank and the Program Participants in the~~

~~Aggregate Facility Limit Increase Request. The Borrower agrees to pay any reasonable expenses incurred by the Administrative Agent, the LC Bank and the Program Participants relating to any Aggregate Facility Limit Increase. Notwithstanding anything herein to the contrary, no LC Bank or Program Participant shall have any obligation to increase its Commitment or Program Participant Commitment, as applicable, and no Commitment of the LC Bank or Program Participant Commitment shall be increased without its consent thereto, and the LC Bank and each Program Participant may at its option, unconditionally and without cause, decline to increase its Commitment or Program Participant Commitment, as applicable.~~

~~(b) In connection with any reduction of the Facility Limit, the Borrower shall remit to the Administrative Agent (i) instructions regarding such reduction, (ii) for payment to the LC Bank, cash in an amount sufficient to pay (x) any outstanding Reimbursement Obligations and (y) all other outstanding Borrower Obligations with respect to such reduction (determined based on the ratio of the reduction of the Facility Limit being effected to the amount of the Facility Limit prior to such reduction or, if the Administrative Agent reasonably determines that any portion of the outstanding Borrower Obligations is allocable solely to that portion of the Facility Limit being reduced or has arisen solely as a result of such reduction, all of such portion). Upon receipt of any such amounts, the Administrative Agent shall apply such amounts first, to the outstanding Reimbursement Obligations, and second, to the payment of the remaining outstanding Borrower Obligations with respect to such reduction by paying such amounts to the Credit Party entitled thereto.~~

ARTICLE IV

SETTLEMENT PROCEDURES AND PAYMENT PROVISIONS

Section 4.01. Settlement Procedures. (a) The Servicer shall set aside and hold in trust for the benefit of the Secured Parties (or, if so requested by the Administrative Agent, segregate in a separate account in the name of the Borrower and approved by the Administrative Agent), for application in accordance with the priority of payments set forth below, all Collections on Pool Receivables that are received by the Servicer or the Borrower or received in any Lock-Box or Collection Account; *provided, however*, that so long as each of the conditions precedent set forth in Section 6.03 are satisfied, the Servicer may release to the Borrower from such Collections the amount (if any) necessary to pay the purchase price for Receivables purchased by the Borrower (including by payments on the Subordinated Notes) in accordance with the terms of the Receivables Purchase Agreement (each such release, a “*Reinvestment*”). On each Settlement Date, the Servicer (or, following its assumption of control of the Collection Accounts, the Administrative Agent) shall, distribute such Collections in the following order of priority:

(i) *first*, to the Servicer for the payment of the accrued Servicing Fees payable for the immediately preceding Settlement Period (*plus*, if applicable, the amount of Servicing Fees payable for any prior Settlement Period to the extent such amount has not been distributed to the Servicer);

(ii) *second*, to each Credit Party (ratably, based on the amount then due and owing), all accrued and unpaid Interest, Fees and Breakage Fees due to such Credit Party for the immediately preceding Settlement Period (including any additional amounts or

indemnified amounts payable under Section 5.03 and Section 13.01 in respect of such payments), plus, if applicable, the amount of any such Interest, Fees and Breakage Fees (including any additional amounts or indemnified amounts payable under Section 5.03 and Section 13.01 in respect of such payments) payable for any prior Settlement Period to the extent such amount has not been distributed to such Credit Party;

(iii) *third*, as set forth in clause (x) or (y) below, as applicable:

(x) prior to the occurrence of the Termination Date: (i) *first*, to the LC Bank (~~for the benefit of the LC Bank and each Program Participant and the Lenders~~, pro rata), for the payment in full of the ~~aggregate-outstanding Reimbursement Obligations~~ Aggregate Capital at such time and (ii) *second*, to the extent that a Borrowing Base Deficit exists on such date, to the LC Collateral Account, in reduction of the Adjusted LC Amount, in an amount equal to the amount necessary (after giving effect to clause (i) above) to reduce the Borrowing Base Deficit to zero (\$0); or

(y) on and after the occurrence of the Termination Date: (i) first, to the LC Bank (~~for the benefit of the LC Bank and each Program Participant and the Lenders~~, pro rata), for the payment in full of the ~~aggregate-outstanding Reimbursement Obligations~~ Aggregate Capital at such time; and (ii) *second*, to the LC Collateral Account (a) the amount necessary to reduce the Adjusted LC Amount to zero (\$0) and (b) an amount equal to the LC Fee Expectation at such time;

(iv) *fourth*, to the Credit Parties, the Affected Persons and the Borrower Indemnified Parties (ratably, based on the amount due and owing at such time), for the payment of all other Borrower Obligations then due and owing by the Borrower to the Credit Parties, the Affected Persons and the Borrower Indemnified Parties; and

(v) *fifth*, the balance, if any, to be paid to the Borrower for its own account.

(b) All payments or distributions to be made by the Servicer, the Borrower and any other Person to the LC Bank, ~~any Program Participant and the Lenders hereunder~~ (or their respective related Affected Persons and the Borrower Indemnified Parties ~~hereunder~~) shall be paid or distributed to the Administrative Agent's Account. The Administrative Agent, upon its receipt in the Administrative Agent's Account of any such payments or distributions, shall distribute such amounts to the LC Bank, ~~each Program Participant~~ Lenders, Affected Persons and the Borrower Indemnified Parties ratably; *provided* that if the Administrative Agent shall have received insufficient funds to pay all of the above amounts in full on any such date, the Administrative Agent shall pay such amounts to the LC Bank, ~~each Program Participant~~ the Lenders, Affected Persons and the Borrower Indemnified Parties in accordance with the priority of payments forth above, and with respect to any such category above for which there are insufficient funds to pay all amounts owing on such date, ratably (based on the amounts in such categories owing to each such Person) among all such Persons entitled to payment thereof.

(c) If and to the extent any Credit Party, any Affected Person or any Borrower

time) on the day when due in same day funds to the Administrative Agent's Account.

(b) Each of the Borrower and the Servicer shall, to the extent permitted by Applicable Law, pay interest on any amount not paid or deposited by it when due hereunder, at an interest rate per annum equal to 2.00% per annum above the Base Rate, payable on demand.

(c) All computations of interest under subsection (b) above and all computations of Interest, Fees and other amounts hereunder shall be made on the basis of a year of 360 days (or, in the case of amounts determined by reference to the Base Rate, 365 or 366 days, as applicable) for the actual number of days (including the first but excluding the last day) elapsed. Whenever any payment or deposit to be made hereunder shall be due on a day other than a Business Day, such payment or deposit shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of such payment or deposit.

ARTICLE V

INCREASED COSTS; FUNDING LOSSES; TAXES; ILLEGALITY AND SECURITY INTEREST

Section 5.01. Increased Costs.

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Affected Person (except any such reserve requirements reflected in the Term SOFR Rate);

(ii) subject any Affected Person to any Taxes (except to the extent such Taxes are Indemnified Taxes for which relief is sought under Section 5.03 or are Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Affected Person any other condition, cost or expense (other than Taxes) (A) affecting the Collateral, this Agreement, any other Transaction Document, ~~the Reimbursement Obligations or~~ any Capital, any Letter of Credit or participation therein or (B) affecting its obligations or rights to make Loans or issue or participate in Letters of Credit;

and the result of any of the foregoing shall be to increase the cost to such Affected Person of (A) acting as the Administrative Agent or a Credit Party hereunder, (B) funding or maintaining any ~~Reimbursement Obligations~~ Capital or issuing or participating in, any Letter of Credit (or interests therein) or (C) maintaining its obligation to fund or maintain any Loan or issuing or participating in, any Letter of Credit ~~or maintaining its obligation to do so~~, or to reduce the amount of any sum received or receivable by such Affected Person hereunder, then, upon request of such Affected Person, the Borrower shall pay to such Affected Person such additional amount or amounts as will compensate such Affected Person for such additional costs incurred or reduction suffered.

(b) *Capital and Liquidity Requirements.* If any Affected Person determines that any

Change in Law affecting such Affected Person or any lending office of such Affected Person or such Affected Person's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of (x) increasing the amount of capital required to be maintained by such Affected Person or Affected Person's holding company, if any, (y) reducing the rate of return on such Affected Person's capital or on the capital of such Affected Person's holding company, if any, to a level below that which such Affected Person or such Affected Person's holding company could have achieved but for such Change in Law or (z) causing an internal capital or liquidity charge or other imputed cost to be assessed upon such Affected Person or Affected Person's holding company, if any, in each case, as a consequence of (A) this Agreement or any other Transaction Document, (B) the commitments of such Affected Person hereunder or under any other Transaction Document, (C) the [Loans](#), Letters of Credit, the Letter of Credit Applications or participations in Letters of Credit, made or issued by such Affected Person or (D) any ~~Reimbursement Obligations~~ [Capital](#), in each case taking into consideration such Affected Person's policies and the policies of such Affected Person's holding company with respect to capital adequacy and liquidity, then from time to time, upon request of such Affected Person, the Borrower will pay to such Affected Person such additional amount or amounts as will compensate such Affected Person or such Affected Person's holding company for any such increase in capital, reduction in rate of return on capital or capital or liquidity charge.

(c) *Adoption of Changes in Law.* The Borrower acknowledges that any Affected Person may institute measures in anticipation of a Change in Law that has been adopted but is not yet effective (including, without limitation, the imposition of internal charges on such Affected Person's interests or obligations under any Transaction Document), and may commence allocating charges to or seeking compensation from the Borrower under this [Section 5.01](#) in connection with such measures, in advance of the effective date of such Change in Law, and the Borrower agrees to pay such charges or compensation to such Affected Person, following demand therefor in accordance with the terms of this [Section 5.01](#), without regard to whether such effective date has occurred.

(d) *Certificates for Reimbursement.* A certificate of an Affected Person setting forth the amount or amounts necessary to compensate such Affected Person or its holding company, as the case may be, as specified in [clause \(a\), \(b\) or \(c\)](#) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall, subject to the priorities of payment set forth in [Section 4.01](#), pay such Affected Person the amount shown as due on any such certificate on the first Settlement Date occurring after the Borrower's receipt of such certificate.

(e) *Delay in Requests.* Failure or delay on the part of any Affected Person to demand compensation pursuant to this [Section 5.01](#) shall not constitute a waiver of such Affected Person's right to demand such compensation; *provided*, that the Borrower shall not be required to compensate an Affected Person pursuant to this [Section 5.01](#) for any increased costs, reductions, increases or charges incurred more than 180 days prior to the date that such Affected Person notifies the Borrower of the Change in Law giving rise to such increased costs, reductions, increases or charges and of such Affected Person's intention to claim compensation therefor.

Section 5.02. ~~Reserved~~ [Funding Losses.](#) (a) [The Borrower will pay each Lender all Breakage Fees due and owing to such Lender.](#)

(b) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender, as specified in clause (a) above and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall, subject to the priorities of payment set forth in Section 4.01, pay such Lender the amount shown as due on any such certificate on the first Settlement Date occurring after the Borrower's receipt of such certificate.

Section 5.03. Taxes.

(a) *Payments Free of Taxes.* Any and all payments by or on account of any obligation of the Borrower under any Transaction Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of the applicable Credit Party, Affected Person or Borrower Indemnified Party) requires the deduction or withholding of any Tax from any such payment by a Credit Party, Affected Person or Borrower Indemnified Party, then the applicable Credit Party, Affected Person or Borrower Indemnified Party shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law, and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 5.03), the applicable Credit Party, Affected Person or Borrower Indemnified Party receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) *Payment of Other Taxes by the Borrower.* The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or, at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes.

(c) *Indemnification by the Borrower.* To the extent not paid, reimbursed or compensated pursuant to Section 5.03(a), the Borrower shall indemnify each Affected Person, within ten days after delivery of the certificate referred to in the last sentences of this clause (c), for the full amount of any (I) Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) payable or paid by such Affected Person or required to be withheld or deducted from a payment to such Affected Person and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority and (II) the excess of any Taxes that arise because any Reimbursement Obligation Capital is not treated for U.S. federal, state, local or franchise tax purposes as intended under Section 5.03(j) over the amount of Taxes that would have been payable had such Reimbursement Obligation Capital been treated by such Governmental Authority for U.S. federal, state, local or franchise tax purposes as intended under Section 5.03(j) (such indemnification will include any U.S. federal, state or local income and franchise taxes necessary to make such Affected Person whole on an after-tax basis taking into account the taxability of receipt of payments under this clause (II) and any reasonable expenses (other than Taxes) arising out of, relating to, or resulting from the foregoing). Promptly upon having knowledge that any such Indemnified Taxes have been levied, imposed or assessed, and promptly upon notice by the Administrative Agent or any Affected Person, to the extent not previously paid by the Affected Person, the Borrower shall pay such Indemnified Taxes directly to the relevant taxing authority or Governmental Authority; provided that neither the Administrative

Agent nor any Affected Person shall be under any obligation to provide any such notice to the Borrower. A certificate that describes in reasonable detail the basis for the indemnified claim, along with copies of any receipts, evidence of payment or other correspondence to or from a Governmental Authority relating to or supporting such indemnified claim shall be delivered to the Borrower by an Affected Person (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of an Affected Person, and shall be conclusive as to the amounts paid or payable absent manifest error.

(d) *Indemnification by the LC Bank and Lenders.* The LC Bank and each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to the LC Bank or such Lender or any of its respective Affiliates that are Affected Persons (but only to the extent that the Borrower and its Affiliates have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting any obligation of the Borrower, the Servicer or their Affiliates to do so), (ii) any Taxes attributable to the failure of the LC Bank or such Lender or any of ~~its~~their respective Affiliates that are Affected Persons to comply with Section 14.03(~~be~~) relating to the maintenance of a Participant Register; and (iii) any Excluded Taxes attributable to the LC Bank or such Lender or any of their respective Affiliates that are Affected Persons, in each case, that are payable or paid by the Administrative Agent in connection with any Transaction Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the LC Bank or the applicable Lender by the Administrative Agent shall be conclusive absent manifest error. The LC Bank and each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to the LC Bank or such Lender or any of its respective Affiliates that are Affected Persons under any Transaction Document or otherwise payable by the Administrative Agent to the LC Bank or such Lender or any of its respective Affiliates that are Affected Persons from any other source against any amount due to the Administrative Agent under this clause (d).

(e) *Evidence of Payments.* As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 5.03, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) *Status of Affected Persons.* (i) Any Affected Person that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Transaction Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Affected Person, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Affected Person is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation

(h) *Survival.* Each party's obligations under this Section 5.03 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Credit Party or any other Affected person, the termination of the Commitments and the repayment, satisfaction or discharge of all the Borrower Obligations and the Servicer's obligations hereunder.

(i) *Updates.* Each Affected Person agrees that if any form or certification it previously delivered pursuant to this Section 5.03 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(j) *Intended Tax Treatment.* Notwithstanding anything to the contrary herein or in any other Transaction Document, all parties to this Agreement covenant and agree to treat ~~all Reimbursement Obligations~~ Capital under this Agreement as debt (and all Interest as interest) for all federal, state, local and franchise tax purposes and agree not to take any position on any tax return inconsistent with the foregoing.

(k) *Treatment of Certain Refunds.* If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.03 (including by the payment of additional amounts pursuant to this Section 5.03), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 5.03 with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (k) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (k), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (k) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the 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 paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

Section 5.04. Inability to Determine Term SOFR Rate; Change in Legality .

(a) If the LC Bank or any Lender shall have determined (which determination shall be conclusive and binding upon the parties hereto absent manifest error) either that: (i) the Term SOFR Rate cannot be determined because it is not available or published on a current basis, (ii) adequate and reasonable means do not exist for ascertaining the Term SOFR Rate, or (iii) the Term SOFR Rate determined pursuant hereto does not accurately reflect the cost to the LC Bank or such Lender (as conclusively determined by the LC Bank or such Lender) of funding or maintaining any ~~Portion of Reimbursement Obligation~~ Capital during such day, as applicable, the LC Bank or

such Lender shall promptly give telephonic notice of such determination, confirmed in writing, to the Administrative Agent and the Borrower. Upon delivery of such notice: (i) no ~~Portion of Reimbursement Obligation~~ Capital shall be funded thereafter at the Term SOFR Rate, and shall instead be funded at the Base Rate, unless and until the LC Bank or such Lender shall have given notice to the Borrower and the Administrative Agent that the circumstances giving rise to such determination no longer exist and (ii) with respect to any ~~outstanding Portion of Reimbursement Obligation~~ Capital then funded at the Term SOFR Rate, the Interest Rate with respect to such ~~Portion of Reimbursement Obligation~~ Capital shall automatically be converted to the Base Rate.

(b) If at any time the LC Bank or any Lender shall have determined (which determination shall be final and conclusive absent manifest error) that the funding or maintenance of any ~~Portion of Reimbursement Obligation~~ Capital at or by reference to the Term SOFR Rate has been made impracticable or unlawful by compliance by the LC Bank or such Lender in good faith with any Applicable Law or any interpretation or application thereof by any Governmental Authority or with any request or directive of any such Governmental Authority (whether or not having the force of law), the LC Bank or such Lender shall notify the Borrower and the Administrative Agent thereof. Upon receipt of such notice, until the LC Bank or such Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such determination no longer apply, (i) no ~~Portion of Reimbursement Obligation~~ Capital shall be funded thereafter at the Term SOFR Rate, and shall instead be funded at the Base Rate, unless and until the LC Bank or such Lender shall have given notice to the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist and (ii) with respect to any outstanding ~~Reimbursement Obligations~~ Capital then funded at the Term SOFR Rate, the Interest Rate with respect to such ~~Reimbursement Obligations~~ Capital shall automatically and immediately be converted to the Base Rate.

(c) (i) Notwithstanding anything to the contrary herein or in any other Transaction Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Transaction Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the LC Bank and the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Transaction Document.

(ii) In connection with the implementation and administration of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Transaction Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Transaction Document.

(iii) The Administrative Agent will promptly notify the Borrower, the LC Bank and the ~~LC Bank~~ Lenders of (A) any occurrence of a Benchmark Transition Event and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to paragraph (iv) below and (E) the

commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, the LC Bank or the Lenders pursuant to this Section 5.04(c), 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 or any selection, 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 to this Agreement or any other Transaction Document except, in each case, as expressly required pursuant to this Section 5.04(c).

(iv) Notwithstanding anything to the contrary herein or in any other Transaction Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate and either (I) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (II) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (II) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may reinstate such previously removed tenor.

(v) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Loan or an issuance of a Letter of Credit, in each case, accruing Interest at such Benchmark, or a conversion to or continuation of a Loan or a Letter of Credit, as the case may be, accruing Interest at the Term SOFR Rate to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Loan or Letter of Credit, a conversion of Loans to Loans, or a conversion of Letters of Credit to Letters of Credit, in each case, accruing Interest at the Base Rate, and, for the avoidance of doubt, all outstanding Loans and Letters of Credit accruing Interest at the Term SOFR Rate shall automatically be converted to Loans or Letters of Credit, as applicable, accruing Interest at the Base Rate. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(vi) As used in this Section 5.04(c):

“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 or is based on a term rate, any tenor for such Benchmark that is or may be used for determining the length of tenor or (y) otherwise, any payment period for Interest calculated with reference to such Benchmark, as applicable, in each case, pursuant to this Agreement

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Transaction Document in accordance with this Section 5.04(c) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Transaction Document in accordance with this Section 5.04(c).

“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.

“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 the Term SOFR Rate or, if no floor is specified, zero.

“Reference Time” means, with respect to any setting of the then-current Benchmark, the time determined by the Administrative Agent in its reasonable discretion.

“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.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment

Section 5.05. Security Interest. (a) As security for the performance by the Borrower of all the terms, covenants and agreements on the part of the Borrower to be performed under this Agreement or any other Transaction Document, including the punctual payment when due of the ~~Outstanding Reimbursement Obligations~~ Aggregate Capital and all Interest in respect thereof, and all other Borrower Obligations, the Borrower hereby grants to the Administrative Agent for its benefit and the ratable benefit of the Secured Parties, a continuing security interest in, all of the Borrower’s right, title and interest in, to and under all of the following, whether now or hereafter owned, existing or arising (collectively, the “*Collateral*”): (i) all Pool Receivables, (ii) all Related Security with respect to such Pool Receivables, (iii) all Collections with respect to such Pool Receivables, (iv) the Lock-~~Boxes~~ and Collection Accounts and all amounts on deposit therein, and all certificates and instruments, if any, from time to time evidencing such Lock-~~Boxes~~ and Collection Accounts and amounts on deposit therein, (v) the LC Collateral Account and all amounts from time to time on deposit therein, (vi) all rights (but none of the obligations) of the Borrower under the Receivables Purchase Agreement, (vii) all other personal and fixture property

or assets of the Borrower of every kind and nature including, without limitation, all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts, chattel paper (whether tangible or electronic), deposit accounts, securities accounts, securities entitlements, letter-of-credit rights, commercial tort claims, securities and all other investment property, supporting obligations, money, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles (including all payment intangibles) (each as defined in the UCC), and (viii) all proceeds of, and all amounts received or receivable under any or all of, the foregoing.

(b) The Administrative Agent (for the benefit of the Secured Parties) shall have, with respect to all the Collateral, and in addition to all the other rights and remedies available to the Administrative Agent (for the benefit of the Secured Parties), all the rights and remedies of a secured party under any applicable UCC. The Borrower hereby authorizes the Administrative Agent to file financing statements describing as the collateral covered thereby “all of the debtor’s personal property or assets” or words to that effect, notwithstanding that such wording may be broader in scope than the collateral described in this Agreement.

(c) Immediately upon the occurrence of the Final Payout Date, the Collateral shall be automatically released from the lien created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Credit Parties hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Borrower; *provided, however*, that promptly following written request therefor by the Borrower delivered to the Administrative Agent following any such termination, and at the sole expense of the Borrower, the Administrative Agent shall execute and deliver to the Borrower UCC-3 termination statements and such other documents as the Borrower shall reasonably request to evidence such termination.

ARTICLE VI

CONDITIONS TO EFFECTIVENESS AND CREDIT EXTENSIONS

Section 6.01. Conditions Precedent to Effectiveness. This Agreement shall become effective as of the Closing Date when (a) the Administrative Agent shall have received each of the documents, agreements (in fully executed form), opinions of counsel, lien search results, UCC filings, certificates and other deliverables listed on the closing memorandum attached as Exhibit H hereto, in each case, in form and substance acceptable to the Administrative Agent and (b) all fees and expenses payable by the Borrower on the Closing Date to the Credit Parties have been paid in full in accordance with the terms of the Transaction Documents.

Section 6.02. Conditions Precedent to All Credit Extensions. Each Credit Extension hereunder on or after the Closing Date shall be subject to the conditions precedent that:

(a) in the case of a Loan (other than a Loan made with respect to Section 3.04), the Borrower shall have delivered to the Administrative Agent and each Lender a Loan Request for such Loan, and in the case of a Letter of Credit, the Borrower shall have delivered to the Administrative Agent, each Lender and the LC Bank, a Letter of Credit Application and an LC Request, in each case, in accordance with Section 2.02(a) or Section

3.02(a), [as applicable](#);

(b) the Servicer shall have delivered to the Administrative Agent ~~and~~, the LC Bank [and each Lender](#) all Information Packages required to be delivered hereunder;

(c) the conditions precedent to such Credit Extension specified in [Section 2.01 or Section 3.01\(a\), as applicable](#), shall be satisfied; and

(d) on the date of such Credit Extension the following statements shall be true and correct (and upon the occurrence of such Credit Extension, the Borrower and the Servicer shall be deemed to have represented and warranted that such statements are then true and correct):

(i) the representations and warranties of the Borrower and the Servicer contained in [Sections 7.01 and 7.02](#) are true and correct in all material respects on and as of the date of such Credit Extension as though made on and as of such date unless such representations and warranties by their terms refer to an earlier date, in which case they shall be true and correct in all material respects on and as of such earlier date;

(ii) no Event of Default or Unmatured Event of Default has occurred and is continuing, and no Event of Default or Unmatured Event of Default would result from such Credit Extension;

(iii) no Borrowing Base Deficit exists or would exist after giving effect to such Credit Extension; and

(iv) the Termination Date has not occurred.

Section 6.03. Conditions Precedent to All Reinvestments. Each Reinvestment hereunder on or after the Closing Date shall be subject to the conditions precedent that:

(a) after giving effect to such Reinvestment, the Servicer shall be holding in trust for the benefit of the Secured Parties an amount of Collections sufficient to pay the sum of (x) all accrued and unpaid Servicing Fees, Interest and Fees, in each case, through the date of such Reinvestment, (y) the amount of any Borrowing Base Deficit, and (z) the amount of all other accrued and unpaid Borrower Obligations through the date of such Reinvestment;

(b) the Borrower shall use the proceeds of such Reinvestment solely to pay the purchase price for Receivables purchased by the Borrower in accordance with the terms of the Receivables Purchase Agreement; and

(c) on the date of such Reinvestment the following statements shall be true and correct (and upon the occurrence of such Reinvestment, the Borrower and the Servicer shall be deemed to have represented and warranted that such statements are then true and correct):

(i) the representations and warranties of the Borrower and the Servicer contained in [Sections 7.01 and 7.02](#) are true and correct in all material respects on

(i) *Taxes.* The Borrower has filed all material Tax returns and reports required by Applicable Law to have been filed by it and has paid all material Taxes, assessments and governmental charges thereby shown to be owing by it, other than any such Taxes, assessments or charges that are being contested in good faith by appropriate proceedings and for which appropriate reserves in accordance with GAAP have been established.

(j) *Solvency.* After giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, the Borrower is Solvent.

(k) *Offices; Legal Name.* The Borrower's sole jurisdiction of organization, and its "location" within the meaning of Section 9-307 of the applicable UCC, is the State of Ohio and such jurisdiction has not changed within four (4) months prior to the date of this Agreement. The office of the Borrower is located at the applicable address specified on Schedule III hereto. The legal name of the Borrower is Davey Receivables LLC.

(l) *Investment Company Act.* The Borrower is not, and is not controlled by an "investment company" registered or required to be registered under the Investment Company Act. The Borrower is not a "covered fund" under Section 13 of the U.S. Bank Holding Company Act of 1956, as amended, and the applicable rules and regulations thereunder (the "*Volcker Rule*"). In determining that Borrower is not a "covered fund" under the Volcker Rule, the Borrower relies on the exemption from the definition of "investment company" set forth in Section 3(c)(5) of the Investment Company Act and does not rely solely on the exemption from the definition of "investment company" set forth in Section 3(c)(1) and/or 3(c)(7) of the Investment Company Act.

(m) *No Material Adverse Effect.* Since the date of formation of the Borrower there has been no Material Adverse Effect with respect to the Borrower.

(n) *Accuracy of Information.* All Information Packages (if prepared by the Borrower or one of its Affiliates, or to the extent that the information contained therein is supplied by the Borrower or an Affiliate of the Borrower), [Loan Requests](#), LC Requests, Letter of Credit Applications, certificates, reports, statements, documents and other information furnished to the Administrative Agent or any other Credit Party by or on behalf of the Borrower pursuant to any provision of this Agreement or any other Transaction Document, or in connection with or pursuant to any amendment or modification of, or waiver under, this Agreement or any other Transaction Document, is, at the time the same are so furnished, complete and correct in all material respects on the date the same are furnished to the Administrative Agent or such other Credit Party, and does not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(o) *Anti-Money Laundering/International Trade Law Compliance.* No Covered Entity is a Sanctioned Person. To the Borrower's knowledge, no Obligor was a Sanctioned Person at the time of origination of any Pool Receivable owing by such Obligor. None of the Borrower, the Servicer or any Originator, either in its own right or through any third party, (i) has any of its assets in a Sanctioned Country or in the

possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (ii) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (iii) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

(p) *Perfection Representations.* (i) This Agreement creates a valid and continuing security interest (as defined in the applicable UCC) in the Borrower's right, title and interest in, to and under the Collateral which (A) security interest has been perfected and is enforceable against creditors of and purchasers from the Borrower and (B) is and will be free of all Adverse Claims in such Collateral.

(ii) The Receivables constitute "accounts" or "general intangibles" within the meaning of Section ~~9-102~~9-102 of the UCC.

(iii) The Borrower owns and has good and marketable title to the Collateral free and clear of any Adverse Claim of any Person.

(iv) All appropriate financing statements, financing statement amendments and continuation statements have been filed in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect (and continue the perfection of) the sale (or, in the case of Davey Tree, contribution) of the Receivables and Related Security from each Originator to the Borrower pursuant to the Receivables Purchase Agreement and the grant by the Borrower of a security interest in the Collateral to the Administrative Agent pursuant to this Agreement.

(v) Other than the security interest granted to the Administrative Agent pursuant to this Agreement, the Borrower has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Collateral except as permitted by this Agreement and the other Transaction Documents. The Borrower has not authorized the filing of and is not aware of any financing statements filed against the Borrower that include a description of collateral covering the Collateral other than any financing statement (i) in favor of the Administrative Agent or (ii) that has been terminated. The Borrower is not aware of any judgment lien, ERISA lien or tax lien filings against the Borrower.

(vi) Notwithstanding any other provision of this Agreement or any other Transaction Document, the representations contained in this Section 7.01(p) shall be continuing and remain in full force and effect until the Final Payout Date.

(q) *The Lock-Boxes and Collection Accounts.*

(i) *Nature of Collection Accounts.* Each Collection Account constitutes a "deposit account" within the meaning of the applicable UCC.

(ii) *Ownership.* Each Lock-Box and Collection Account is in the name of the Borrower, and the Borrower owns and has good and marketable title to the

Collection Accounts free and clear of any Adverse Claim.

(iii) *Perfection.* The Borrower has delivered to the Administrative Agent a fully executed Account Control Agreement relating to each Lock-Box and Collection Account, pursuant to which each applicable Collection Account Bank has agreed to comply with the instructions originated by the Administrative Agent directing the disposition of funds in such Lock-Box and Collection Account without further consent by the Borrower, the Servicer or any other Person. The Administrative Agent has “control” (as defined in Section ~~9-1049-104~~ of the UCC) over each Collection Account.

(iv) *Instructions.* Neither the Lock-Boxes nor the Collection Accounts are in the name of any Person other than the Borrower. Neither the Borrower nor the Servicer has consented to the applicable Collection Account Bank complying with instructions of any Person other than the Administrative Agent.

(r) *Ordinary Course of Business.* Each remittance of Collections by or on behalf of the Borrower to the Credit Parties under this Agreement will have been (i) in payment of a debt incurred by the Borrower in the ordinary course of business or financial affairs of the Borrower and (ii) made in the ordinary course of business or financial affairs of the Borrower.

(s) *Compliance with Law.* The Borrower has complied in all material respects with all Applicable Laws to which it may be subject.

(t) *Bulk Sales Act.* No transaction contemplated by this Agreement requires compliance by it with any bulk sales act or similar law.

(u) *Eligible Receivables.* Each Receivable included as an Eligible Receivable in the calculation of the Net Receivables Pool Balance as of any date is an Eligible Receivable as of such date.

(v) *Opinions.* The facts regarding the Borrower, the Servicer, each Originator, the Performance Guarantor, the Receivables, the Related Security and the related matters set forth or assumed in each of the opinions of counsel delivered in connection with this Agreement and the Transaction Documents are true and correct in all material respects.

(w) *Other Transaction Documents.* Each representation and warranty made by the Borrower under each other Transaction Document to which it is a party is true and correct in all material respects as of the date when made, except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(x) *Reaffirmation of Representations and Warranties.* On the date of each Credit Extension, on the date of each Reinvestment, on each Settlement Date and on the date each Information Package or other report is delivered to the Administrative Agent, the LC Bank or any ~~Program Participant~~Lender hereunder, the Borrower shall be deemed to have certified that (i) all representations and warranties of the Borrower hereunder are true

and correct in all material respects on and as of such day as though made on and as of such day, except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date) and (ii) no Event of Default or an Unmatured Event of Default has occurred and is continuing or will result from such Credit Extension or Reinvestment.

(y) *Issuance of Debt or Other Obligations.* The Borrower has not, does not and will not during this Agreement (i) issue any obligations that (A) constitute asset-backed commercial paper, or (B) are securities required to be registered under the Securities Act or that may be offered for sale under Rule 144A or a similar exemption from registration under the Securities Act or the rules promulgated thereunder, or (ii) issue any other debt obligations or equity interest other than debt obligations substantially similar to the obligations of the Borrower under this Agreement that are (A) issued to other banks or asset-backed commercial paper conduits in privately negotiated transactions, and (B) subject to transfer restrictions substantially similar to the transfer restrictions set forth in this Agreement. The Borrower further represents and warrants that its assets and liabilities are consolidated with the assets and liabilities of Davey Tree ~~Group~~ for purposes of generally accepted accounting principles.

Notwithstanding any other provision of this Agreement or any other Transaction Document, the representations and warranties contained in this Section 7.01 shall be continuing, and remain in full force and effect until the Final Payout Date.

Section 7.02. Representations and Warranties of the Servicer. The Servicer represents and warrants to each Credit Party as of the Closing Date, on each Settlement Date and on each day on which a Credit Extension shall have occurred:

(a) *Organization and Good Standing.* The Servicer is a duly organized and validly existing corporation in good standing under the laws of the State of Ohio, with the power and authority under its organizational documents and under the laws of the State of Ohio to own its properties and to conduct its business as such properties are currently owned and such business is presently conducted.

(b) *Due Qualification.* The Servicer is duly qualified to do business, is in good standing as a foreign entity and has obtained all necessary licenses and approvals in all jurisdictions in which the conduct of its business or the servicing of the Pool Receivables as required by this Agreement requires such qualification, licenses or approvals, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) *Power and Authority; Due Authorization.* The Servicer has all necessary power and authority to (i) execute and deliver this Agreement and the other Transaction Documents to which it is a party and (ii) perform its obligations under this Agreement and the other Transaction Documents to which it is a party and the execution, delivery and performance of, and the consummation of the transactions provided for in, this Agreement and the other Transaction Documents to which it is a party have been duly authorized by the Servicer by all necessary action.

(i) *Accuracy of Information.* All Information Packages (if prepared by the Servicer or one of its Affiliates, or to the extent that the information contained therein is supplied by the Servicer or an Affiliate of the Servicer), [Loan Requests](#), LC Requests, Letter of Credit Applications, certificates, reports, statements, documents and other information furnished to the Administrative Agent or any other Credit Party by the Servicer pursuant to any provision of this Agreement or any other Transaction Document, or in connection with or pursuant to any amendment or modification of, or waiver under, this Agreement or any other Transaction Document, is, at the time the same are so furnished, complete and correct in all material respects on the date the same are furnished to the Administrative Agent or such other Credit Party, and does not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(j) *Location of Records.* The offices where the initial Servicer keeps all of its records relating to the servicing of the Pool Receivables are located at 1500 N. Mantua St., Kent, Ohio 44240.

(k) *Credit and Collection Policy.* The Servicer has complied in all material respects with the Credit and Collection Policy with regard to each Pool Receivable and the related Contracts.

(l) *Eligible Receivables.* Each Receivable included as an Eligible Receivable in the calculation of the Net Receivables Pool Balance as of any date is an Eligible Receivable as of such date.

(m) *Servicing Programs.* No license or approval is required for the Administrative Agent's use of any software or other computer program used by the Servicer, any Originator or any Sub-Servicer in the servicing of the Pool Receivables, other than those which have been obtained and are in full force and effect.

(n) *Servicing of Pool Receivables.* Since the Closing Date there has been no material adverse change in the ability of the Servicer or any Sub-Servicer to service and collect the Pool Receivables and the Related Security.

(o) *Other Transaction Documents.* Each representation and warranty made by the Servicer under each other Transaction Document to which it is a party (including, without limitation, each Receivables Purchase Agreement) is true and correct in all material respects as of the date when made, except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such date).

(p) *No Material Adverse Effect.* Since December 31, ~~2015~~[2023](#) there has been no Material Adverse Effect on the Servicer.

(q) *Investment Company Act.* The Servicer is not an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act.

(r) *Anti-Money Laundering/International Trade Law Compliance.* No Covered Entity is a Sanctioned Person. To the Servicer's knowledge, no Obligor was a Sanctioned Person at the time of origination of any Pool Receivable owing by such Obligor. None of the Borrower, the Servicer or any Originator, either in its own right or through any third party, (i) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (ii) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (iii) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

(s) *Financial Condition.* The consolidated balance sheets of the Servicer and its consolidated Subsidiaries as of December 31, ~~2015~~2023 and the related statements of income and shareholders' equity of the Servicer and its consolidated Subsidiaries for the fiscal year then ended, copies of which have been furnished to the Administrative Agent, the LC Bank and ~~each Program Participant~~the Lenders, present fairly in all material respects the consolidated financial position of the Servicer and its consolidated Subsidiaries for the period ended on such date, all in accordance with GAAP.

(t) *Bulk Sales Act.* No transaction contemplated by this Agreement requires compliance by it with any bulk sales act or similar law.

(u) *Taxes.* The Servicer has (i) timely filed all tax returns (federal, state and local) required to be filed by it and (ii) paid, or caused to be paid, all taxes, assessments and other governmental charges, if any, other than (a) taxes, assessments and other governmental charges being contested in good faith by appropriate proceedings and as to which adequate reserves have been provided in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(v) *Opinions.* The facts regarding the Borrower, the Servicer, each Originator, the Performance Guarantor, the Receivables, the Related Security and the related matters set forth or assumed in each of the opinions of counsel delivered in connection with this Agreement and the Transaction Documents are true and correct in all material respects.

(w) *Reaffirmation of Representations and Warranties.* On the date of each Credit Extension, on the date of each Reinvestment, on each Settlement Date and on the date each Information Package or other report is delivered to the Administrative Agent, the LC Bank or any ~~Program Participant~~Lender hereunder, the Servicer shall be deemed to have certified that (i) all representations and warranties of the Servicer hereunder are true and correct in all material respects on and as of such day as though made on and as of such day, except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such date) and (ii) no Event of Default or an Unmatured Event of Default has occurred and is continuing or will result from such Credit Extension or Reinvestment.

Notwithstanding any other provision of this Agreement or any other Transaction

Document, the representations contained in this Section 7.02 shall be continuing, and remain in full force and effect until the Final Payout Date.

ARTICLE VIII

COVENANTS

Section 8.01. Covenants of the Borrower. At all times from the Closing Date until the Final Payout Date:

(a) *Payment of Principal and Interest.* The Borrower shall duly and punctually pay ~~Reimbursement Obligations~~ Capital, Interest, Fees and all other amounts payable by the Borrower hereunder in accordance with the terms of this Agreement.

(b) *Existence.* The Borrower shall keep in full force and effect its existence and rights as a limited liability company under the laws of the State of Ohio, and shall obtain and preserve its qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, the other Transaction Documents and the Collateral.

(c) *Financial Reporting.* The Borrower will maintain a system of accounting established and administered in accordance with GAAP, and the Borrower (or the Servicer on its behalf) shall furnish to the Administrative Agent, the LC Bank and each ~~Program Participant~~ Lender:

(i) *Annual Financial Statements of the Borrower.* Promptly upon completion and in no event later than ninety (90) days after the close of each fiscal year of the Borrower, annual unaudited financial statements of the Borrower certified by a Financial Officer of the Borrower that they fairly present in all material respects, in accordance with GAAP, the financial condition of the Borrower as of the date indicated and the results of its operations for the periods indicated.

(ii) *Information Packages.* (x) As soon as available and in any event not later than two (2) Business Days prior to each Settlement Date, an Information Package as of the most recently completed Fiscal Month, and (y) within two (2) Business Days following a request from time to time by the Administrative Agent, an interim report on the Pool Receivables containing such information as the Administrative Agent may reasonably request.

(iii) *Other Information.* Such other information (including non-financial information) as the Administrative Agent, the LC Bank or any ~~Program Participant~~ Lender may from time to time reasonably request.

(iv) *Quarterly Financial Statements of Davey Tree.* As soon as available and in no event later than fifty (50) days following the end of each of the first three (3) fiscal quarters in each of the Servicer's fiscal years, (A) the unaudited consolidated balance sheet and statements of income of the Servicer and its

consolidated Subsidiaries as at the end of such fiscal quarter and the related unaudited consolidated statements of earnings and cash flows for such fiscal quarter and for the elapsed portion of the fiscal year ended with the last day of such fiscal quarter, in each case setting forth comparative figures for the corresponding fiscal quarter in the prior fiscal year, all of which shall be certified by a Financial Officer of Davey Tree that they fairly present in all material respects, in accordance with GAAP, the financial condition of Davey Tree and its consolidated Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes.

(v) *Annual Financial Statements of Davey Tree.* Within one hundred (100) days after the close of each of Davey Tree's fiscal years, the consolidated balance sheet of Davey Tree and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of earnings and cash flows for such fiscal year setting forth comparative figures for the preceding fiscal year, all reported on by independent certified public accountants of recognized national standing (without a "going concern" or like qualification or exception) to the effect that such consolidated financial statements present fairly in all material respects, in accordance with GAAP, the financial condition of Davey Tree and its consolidated Subsidiaries as of the dates indicated and the results of their operations for the periods indicated.

(vi) *Other Reports and Filings.* Promptly (but in any event within ten (10) days) after the filing or delivery thereof, copies of all financial information, proxy materials, reports, if any, which Davey Tree or any of its consolidated Subsidiaries shall publicly file with the SEC or deliver to holders (or any trustee, agent or other representative therefor) of any of its material Debt pursuant to the terms of the documentation governing the same.

Notwithstanding anything herein to the contrary, any financial information, proxy statements or other material required to be delivered pursuant to this paragraph (c) shall be deemed to have been furnished to each of the Administrative Agent, the LC Bank and each ~~Program Participant~~[Lender](#) on the date that such report, proxy statements or other material is posted on the SEC's website at www.sec.gov.

(d) *Notices.* The Borrower (or the Servicer on its behalf) will notify the Administrative Agent, the LC Bank and each ~~Program Participant~~[Lender](#) in writing of any of the following events promptly upon (but in no event later than two (2) Business Days after (other than with respect to clause (v) below) a Financial Officer or other officer learning of the occurrence thereof, with such notice describing the same, and if applicable, the steps being taken by the Person(s) affected with respect thereto:

(i) *Notice of Events of Default or Unmatured Events of Default.* A statement of a Financial Officer of the Borrower setting forth details of any Event of Default or Unmatured Event of Default that has occurred and is continuing and the action which the Borrower has taken proposes to take with respect thereto.

reasonably be expected to have a Material Adverse Effect.

(f) *Compliance with Laws.* The Borrower will comply with all Applicable Laws to which it may be subject if the failure to comply could reasonably be expected to have a Material Adverse Effect.

(g) *Furnishing of Information and Inspection of Receivables.* The Borrower will furnish or cause to be furnished to the Administrative Agent, the LC Bank and each ~~Program Participant~~Lender from time to time such information with respect to the Pool Receivables and the other Collateral as the Administrative Agent, the LC Bank and each ~~Program Participant~~Lender may reasonably request. The Borrower will, at the Borrower's expense, during regular business hours with reasonable prior written notice (i) permit the Administrative Agent, the LC Bank and each ~~Program Participant~~Lender or their respective agents or representatives to (A) examine and make copies of and abstracts from all books and records relating to the Pool Receivables or other Collateral, (B) visit the offices and properties of the Borrower for the purpose of examining such books and records and (C) discuss matters relating to the Pool Receivables, the other Collateral or the Borrower's performance hereunder or under the other Transaction Documents to which it is a party with any of the officers, directors, employees or independent public accountants of the Borrower having knowledge of such matters and (ii) without limiting the provisions of clause (i) above, during regular business hours, at the Borrower's expense, upon reasonable prior written notice from the Administrative Agent, permit certified public accountants or other auditors acceptable to the Administrative Agent to conduct a review of its books and records with respect to such Pool Receivables and other Collateral; provided, that the Borrower shall be required to reimburse the Administrative Agent for only one (1) such review pursuant to clauses (i) and (ii) above in any twelve-month period, unless an Event of Default has occurred and is continuing.

(h) *Payments on Receivables, Collection Accounts.* The Borrower (or the Servicer on its behalf) will, and will cause each Originator to, at all times, instruct all Obligors to deliver payments on the Pool Receivables to a Collection Account or a Lock-Box. The Borrower (or the Servicer on its behalf) will, and will cause each Originator to, at all times, maintain such books and records necessary to identify Collections received from time to time on Pool Receivables and to segregate such Collections from other property of the Servicer and the Originators. If any payments on the Pool Receivables or other Collections are received by the Borrower, the Servicer or an Originator, it shall hold such payments in trust for the benefit of the Administrative Agent and the other Secured Parties and promptly (but in any event within one (1) Business Day after receipt) remit such funds into a Collection Account. The Borrower (or the Servicer on its behalf) will cause each Collection Account Bank to comply with the terms of each applicable Account Control Agreement. The Borrower shall not permit funds other than Collections on Pool Receivables and other Collateral to be deposited into any Collection Account. If such funds are nevertheless deposited into any Collection Account, the Borrower (or the Servicer on its behalf) will within two (2) Business Days identify and transfer such funds to the appropriate Person entitled to such funds. The Borrower will not, and will not permit the Servicer, any Originator or any other Person to commingle Collections or other funds to which the Administrative Agent or any other Secured Party is

entitled, with any other funds. The Borrower shall only add a Collection Account (or a related Lock-Box) or a Collection Account Bank to those listed on Schedule II to this Agreement, if the Administrative Agent has received notice of such addition and an executed and acknowledged copy of an Account Control Agreement (or an amendment thereto) in form and substance acceptable to the Administrative Agent from the applicable Collection Account Bank. The Borrower shall only terminate a Collection Account Bank or close a Collection Account (or a related Lock-Box) with the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld, conditioned or delayed. Upon receipt from any Collection Account Bank of notice that such Collection Account Bank is terminating or intends to terminate any Account Control Agreement, the Borrower (or the Servicer on its behalf) will, and will cause each Originator to, at all times, instruct all Obligors to deliver payments on the Pool Receivables to a different Collection Account or a Lock-Box that is subject to an Account Control Agreement that has not been terminated (or that the applicable Collection Account Bank does not intend to terminate).

(i) *Sales, Liens, etc.* Except as otherwise provided herein, the Borrower will not sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Adverse Claim upon (including, without limitation, the filing of any financing statement) or with respect to, any Pool Receivable or other Collateral, or assign any right to receive income in respect thereof.

(j) *Extension or Amendment of Pool Receivables; Compliance with Credit and Collection Policy.* Except as otherwise permitted in Section 9.02, the Borrower will not, and will not permit the Servicer to, alter the delinquency status or adjust the Outstanding Balance or otherwise modify the terms of any Pool Receivable in any material respect, or amend, modify or waive, in any material respect, any term or condition of any related Contract. The Borrower shall at its expense, timely and fully perform and comply in all material respects with all provisions, covenants and other promises required to be observed by it under the Contracts related to the Pool Receivables, and timely and fully comply with the Credit and Collection Policy with regard to each Pool Receivable and the related Contract.

(k) *Changes to Credit and Collection Policy.* The Borrower will not make any material change in the Credit and Collection Policy without the prior written consent of the Administrative Agent, the LC Bank and Required ~~Program Participants~~ Lenders, which consent shall not be unreasonably withheld, conditioned or delayed. Promptly following any change in the Credit and Collection Policy, the Borrower will deliver a copy of the updated Credit and Collection Policy to the Administrative Agent, the LC Bank and each ~~Program Participant~~ Lender.

(l) *Fundamental Changes.* The Borrower shall not, without the prior written consent of the Administrative Agent, the LC Bank and Required ~~Program Participants~~ Lenders, permit itself (i) to merge or consolidate with or 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, any Person or (ii) to be directly owned by any Person other than Davey Tree. The Borrower shall provide the Administrative Agent with at least thirty (30) days' prior

by applicable law, prepare and present to the Administrative Agent for the Administrative Agent's authorization and approval, all financing statements, amendments, continuations or initial financing statements in lieu of a continuation statement, or other filings necessary to continue, maintain and perfect the Administrative Agent's security interest as a first-~~p~~priority interest. The Administrative Agent's approval of such filings shall authorize the Borrower to file such financing statements under the UCC without the signature of the Borrower, any Originator or the Administrative Agent where allowed by Applicable Law. Notwithstanding anything else in the Transaction Documents to the contrary, the Borrower shall not have any authority to file a termination, partial termination, release, partial release, or any amendment that deletes the name of a debtor or excludes collateral of any such financing statements filed in connection with the Transaction Documents, without the prior written consent of the Administrative Agent, except as set forth in Section 5.06(c) hereof.

(q) *Certain Agreements.* Other than in connection with the Final Payout Date, without the prior written consent of the Administrative Agent, the LC Bank and Required ~~Program Participants~~Lenders, the Borrower will not (and will not permit any Originator or the Servicer to) amend, modify, waive, revoke or terminate any Transaction Document to which it is a party or any provision of the Borrower's organizational documents which requires the consent of the "Independent Manager" (as such term is used in the Borrower's Operating Agreement).

(r) *Other Business.* The Borrower will not: (i) engage in any business other than the transactions contemplated by the Transaction Documents, (ii) create, incur or permit to exist any Debt of any kind (or cause or permit to be issued for its account any letters of credit (excluding, for the avoidance of doubt, Letters of Credit issued hereunder)) or bankers' acceptances other than pursuant to this Agreement or the Subordinated Notes or (iii) form any Subsidiary or make any investments in any other Person.

(s) *Restricted Payments.* (i) Except pursuant to clause (ii) below, the Borrower will not: (A) purchase or redeem any of its membership interests, (B) declare or pay any dividend or set aside any funds for any such purpose, (C) prepay, purchase or redeem any Debt (other than any Borrower Obligations), (D) lend or advance any funds or (E) repay any loans or advances to, for or from any of its Affiliates (the amounts described in clauses (A) through (E) being referred to as "*Restricted Payments*").

(ii) Subject to the limitations set forth in clause (iii) below, the Borrower may make Restricted Payments so long as such Restricted Payments are made only in one or more of the following ways: (A) the Borrower may make cash payments (including prepayments) on the Subordinated Notes in accordance with their respective terms and (B) the Borrower may declare and pay dividends if, both immediately before and immediately after giving effect thereto, the Borrower's Net Worth is not less than the Required Capital Amount.

(iii) The Borrower may make Restricted Payments only out of the funds, if any, it receives pursuant to ~~Sections~~Section 4.01 of this Agreement; *provided*, that the Borrower shall not pay, make or declare any Restricted Payment (including any dividend) if, after

any payments to, a Sanctioned Person or a Sanctioned Country.

(w) *Anti-Money Laundering/International Trade Law Compliance.* No Covered Entity will become a Sanctioned Person. None of the Borrower, the Servicer or any Originator, either in its own right or through any third party, will (i) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (ii) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (iii) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (iv) use the proceeds of any Credit Extension to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law. The funds used to repay each Credit Extension will not be derived from any unlawful activity. The Borrower shall comply with all Anti-Terrorism Laws applicable to it. The Borrower shall promptly notify the Administrative Agent, the LC Bank and each **Program Participant Lender** in writing upon the occurrence of a Reportable Compliance Event with respect to the Borrower, the Servicer, any Originator, or any Subsidiary thereof and upon becoming aware of the occurrence of a Reportable Compliance Event with respect to any other Covered Entity.

(x) *Borrower's Net Worth.* The Borrower shall not permit the Borrower's Net Worth to be less than the Required Capital Amount; *provided*, that the foregoing shall not require Davey Tree to make any additional capital contributions to the Borrower.

(y) *Credit Risk Retention.* The Borrower shall cooperate with each Credit Party (including by providing such information and entering into or delivering such additional agreements or documents reasonably requested by such Credit Party) to the extent reasonably necessary to assure such Credit Party that the Originators retain credit risk in the amount and manner required by the Credit Risk Retention Rules and to permit such Credit Party to perform its due diligence and monitoring obligations (if any) under the Credit Risk Retention Rules.

Section 8.02. Covenants of the Servicer. At all times from the Closing Date until the Final Payout Date:

(a) *Financial Reporting.* The Servicer will maintain a system of accounting established and administered in accordance with GAAP, and the Servicer shall furnish to the Administrative Agent, the LC Bank and each **Program Participant Lender**:

(i) *Quarterly Financial Statements of Servicer.* As soon as available and in no event later than fifty (50) days following the end of each of the first three fiscal quarters in each of the Servicer's fiscal years, (A) the unaudited consolidated balance sheet and statements of income of the Servicer and its consolidated Subsidiaries as at the end of such fiscal quarter and the related unaudited consolidated statements of earnings and cash flows for such fiscal quarter and for the elapsed portion of the fiscal year ended with the last day of such fiscal quarter, in each case setting forth comparative figures for the corresponding fiscal quarter in

the prior fiscal year, all of which shall be certified by a Financial Officer of Davey Tree that they fairly present in all material respects, in accordance with GAAP, the financial condition of the Servicer and its consolidated Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes.

(ii) *Annual Financial Statements of the Servicer.* Within one hundred (100) days after the close of each of Servicer's fiscal years, the consolidated balance sheet of the Servicer and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of earnings and cash flows for such fiscal year setting forth comparative figures for the preceding fiscal year, all reported on by independent certified public accountants of recognized national standing (without a "going concern" or like qualification or exception) to the effect that such consolidated financial statements present fairly in all material respects, in accordance with GAAP, the financial condition of the Servicer and its consolidated Subsidiaries as of the dates indicated and the results of their operations for the periods indicated.

(iii) *Compliance Certificates.* (a) A compliance certificate promptly upon delivery to the Administrative Agent, the LC Bank and each **Program Participant Lender** of the audited financial statements pursuant to Section 8.01(c)(v) and in no event later than one hundred (100) days after the close of the Servicer's fiscal year, in form and substance substantially similar to Exhibit G signed by a Financial Officer of the Servicer, solely in his or her capacity as an officer of the Servicer, stating that no Event of Default or Unmatured Event of Default has occurred and is continuing, or if any Event of Default or Unmatured Event of Default has occurred and is continuing, stating the nature and status thereof and (b) within fifty (50) days after the close of each fiscal quarter of the Servicer, a compliance certificate in form and substance substantially similar to Exhibit G signed by a Financial Officer of the Servicer, solely in his or her capacity as an officer of the Servicer, stating that no Event of Default or Unmatured Event of Default has occurred and is continuing, or if any Event of Default or Unmatured Event of Default has occurred and is continuing, stating the nature and status thereof.

(iv) *Information Packages.* (x) As soon as available and in any event not later than two (2) Business Days prior to each Settlement Date, an Information Package as of the most recently completed Fiscal Month and (y) within two (2) Business Days following a request from time to time by the Administrative Agent, an interim report on the Pool Receivables containing such information as the Administrative Agent may reasonably request.

(v) *Other Reports and Filings.* Promptly (but in any event within ten days) after the filing or delivery thereof, copies of all financial information, proxy materials and reports, if any, which the Servicer or any of its consolidated Subsidiaries shall publicly file with the SEC or deliver to holders (or any trustee, agent or other representative therefor) of any of its material Debt pursuant to the

terms of the documentation governing the same.

(vi) *Other Information.* Such other information (including non-financial information) as the Administrative Agent, the LC Bank or any ~~Program Participant~~Lender may from time to time reasonably request, including any information available to the Borrower, the Servicer or any Originator as the Administrative Agent, the LC Bank or any ~~Program Participant~~Lender may reasonably request.

Notwithstanding anything herein to the contrary, any financial information, proxy statements or other material required to be delivered pursuant to this paragraph (a) shall be deemed to have been furnished to each of the Administrative Agent, the LC Bank and each ~~Program Participant~~Lender on the date that such report, proxy statements or other material is posted on the SEC's website at www.sec.gov.

(b) *Notices.* The Servicer will notify the Administrative Agent, the LC Bank and each ~~Program Participant~~Lender in writing of any of the following events promptly upon (but in no event later than two (2) Business Days after (other than with respect to clause (v) below)) a Financial Officer or other officer learning of the occurrence thereof, with such notice describing the same, and if applicable, the steps taken or being taken by the Person(s) affected with respect thereto:

(i) *Notice of Events of Default or Unmatured Events of Default.* A statement of a Financial Officer of the Servicer setting forth details of any Event of Default or Unmatured Event of Default that has occurred and is continuing and the action which the Servicer has taken or proposes to take with respect thereto.

(ii) *Representations and Warranties.* The failure of any representation or warranty made or deemed made by the Servicer under this Agreement or any other Transaction Document to be true and correct in any material respect when made or deemed made.

(iii) *Litigation.* The institution of any litigation, arbitration proceeding or governmental proceeding which could reasonably be expected to have a Material Adverse Effect.

(iv) *Adverse Claim.* (A) Any Person shall obtain an Adverse Claim upon the Collateral or any material portion thereof, (B) any Person other than the Borrower, the Servicer or the Administrative Agent shall obtain any rights or direct any action with respect to any Collection Account (or related Lock-Box) or (C) any Obligor shall receive any change in payment instructions with respect to Pool Receivable(s) from a Person other than the Borrower, the Servicer or the Administrative Agent.

(v) *Name Changes.* At least thirty (30) days before any change in any Originator's or the Borrower's name, jurisdiction of organization or any other change requiring the amendment of, or the filing of new, UCC financing statements, a notice setting forth such changes and the effective date thereof.

(vi) *Change in Accountants or Accounting Policy.* Any change in (i) the external accountants of the Borrower, the Servicer, any Originator or the Performance Guarantor, (ii) any accounting policy of the Servicer or the Borrower or (iii) any material accounting policy of any Originator that is relevant to the transactions contemplated by this Agreement or any other Transaction Document (it being understood that any change to the manner in which any Originator accounts for the Pool Receivables shall be deemed “material” for such purpose).

(vii) *Material Adverse Change.* Promptly after the occurrence thereof, notice of any material adverse change in the business, operations, property or financial or other condition of any Originator, the Servicer, the Performance Guarantor, or the Borrower.

(c) *Conduct of Business.* The Servicer will do all things necessary to remain duly incorporated, validly existing and in good standing as a domestic corporation in its jurisdiction of incorporation and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted if the failure to have such authority could reasonably be expected to have a Material Adverse Effect.

(d) *Compliance with Laws.* The Servicer will comply with all Applicable Laws to which it may be subject if the failure to comply could reasonably be expected to have a Material Adverse Effect. The Servicer shall service the Receivables in accordance with the terms hereof and the terms of the related Contracts.

(e) *Furnishing of Information and Inspection of Receivables.* The Servicer will furnish or cause to be furnished to the Administrative Agent, the LC Bank and each ~~Program Participant~~Lender from time to time such information with respect to the Pool Receivables and the other Collateral as the Administrative Agent, the LC Bank or any ~~Program Participant~~Lender may reasonably request. The Servicer will, at the Servicer’s expense, during regular business hours with reasonable prior written notice, (i) permit the Administrative Agent, the LC Bank and each ~~Program Participant~~Lender or their respective agents or representatives to (A) examine and make copies of and abstracts from all books and records relating to the Pool Receivables or other Collateral, (B) visit the offices and properties of the Servicer for the purpose of examining such books and records and (C) discuss matters relating to the Pool Receivables, the other Collateral or the Servicer’s performance hereunder or under the other Transaction Documents to which it is a party with any of the officers, directors, employees or independent public accountants of the Servicer (provided, that representatives of the Servicer are present during such discussions) having knowledge of such matters and (ii) without limiting the provisions of clause (i) above, during regular business hours, at the Servicer’s expense, upon reasonable prior written notice from the Administrative Agent, permit certified public accountants or other auditors acceptable to the Administrative Agent to conduct a review of its books and records with respect to the Pool Receivables and other Collateral; *provided*, that the Servicer shall be required to reimburse the Administrative Agent for only one (1) such review pursuant to clause (ii) above in any twelve--month period unless an Event of Default has occurred and is continuing.

(f) *Payments on Receivables, Collection Accounts.* The Servicer will at all times, instruct all Obligors to deliver payments on the Pool Receivables to a Collection Account or a Lock-~~Box~~. The Servicer will, at all times, maintain such books and records necessary to identify Collections received from time to time on Pool Receivables and to segregate such Collections from other property of the Servicer and the Originators. If any payments on the Pool Receivables or other Collections are received by the Borrower, the Servicer or an Originator, it shall hold such payments in trust for the benefit of the Administrative Agent and the other Secured Parties and promptly (but in any event within one (1) Business Day after receipt) remit such funds into a Collection Account. The Servicer shall not permit funds other than Collections on Pool Receivables and other Collateral to be deposited into any Collection Account. If such funds are nevertheless deposited into any Collection Account, the Servicer will within two (2) Business Days identify and transfer such funds to the appropriate Person entitled to such funds. The Servicer will not, and will not permit the Borrower, any Originator or any other Person to commingle Collections or other funds to which the Administrative Agent or any other Secured Party is entitled, with any other funds. The Servicer shall only add a Collection Account (or a related Lock-~~Box~~), or a Collection Account Bank to those listed on Schedule II to this Agreement, if the Administrative Agent has received notice of such addition and an executed and acknowledged copy of an Account Control Agreement (or an amendment thereto) in form and substance acceptable to the Administrative Agent from the applicable Collection Account Bank. The Servicer shall only terminate a Collection Account Bank or close a Collection Account (or a related Lock-~~Box~~) with the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld, conditioned or delayed. Upon receipt from any Collection Account Bank of notice that such Collection Account Bank is terminating or intends to terminate any Account Control Agreement, the Servicer will, and will cause each Originator to, at all times, instruct all Obligors to deliver payments on the Pool Receivables to a different Collection Account or a Lock-~~Box~~ that is subject to an Account Control Agreement that has not been terminated (or that the applicable Collection Account Bank does not intend to terminate).

(g) *Extension or Amendment of Pool Receivables; Compliance with Credit and Collection Policy.* Except as otherwise permitted in Section 9.02, the Servicer will not alter the delinquency status or adjust the Outstanding Balance or otherwise modify the terms of any Pool Receivable in any material respect, or amend, modify or waive, in any material respect, any term or condition of any related Contract. The Servicer shall at its expense, timely and fully perform and comply in all material respects with all provisions, covenants and other promises required to be observed by it under the Contracts related to the Pool Receivables, and timely and fully comply with the Credit and Collection Policy with regard to each Pool Receivable and the related Contract.

(h) *Changes to Credit and Collection Policy.* The Servicer will not make any material change in the Credit and Collection Policy without the prior written consent of the Administrative Agent, the LC Bank and Required ~~Program Participants~~ Lenders, which consent shall not be unreasonably withheld, conditioned or delayed. Promptly following any change in the Credit and Collection Policy, the Servicer will deliver a copy of the updated Credit and Collection Policy to the Administrative Agent, the LC Bank and each

~~Program Participant~~Lender.

(i) *Records*. The Servicer will maintain and implement administrative and operating procedures (including an ability to recreate records evidencing Pool Receivables and related Contracts in the event of the destruction of the originals thereof), and keep and maintain all documents, books, records, computer tapes and disks and other information reasonably necessary or advisable for the collection of all Pool Receivables (including records adequate to permit the daily identification of each Pool Receivable and all Collections of and adjustments to each existing Pool Receivable).

(j) *Identifying of Records*. The Servicer shall identify its master data processing records relating to Pool Receivables and related Contracts with a legend that indicates that the Pool Receivables have been pledged in accordance with this Agreement.

(k) *Change in Payment Instructions to Obligors*. The Servicer shall not (and shall not permit any Sub-~~Servicer~~ to) add, replace or terminate any Collection Account (or any related Lock-~~Box~~) or make any change in its instructions to the Obligors regarding payments to be made to the Collection Accounts (or any related Lock-~~Box~~), other than any instruction to remit payments to a different Collection Account (or any related Lock-~~Box~~), unless the Administrative Agent shall have received (i) prior written notice of such addition, termination or change and (ii) a signed and acknowledged Account Control Agreement (or an amendment thereto) with respect to such new Collection Accounts (or any related Lock-~~Box~~) and the Administrative Agent shall have consented to such change in writing, which consent shall not be unreasonably withheld, conditioned or delayed.

(l) *Security Interest, Etc*. The Servicer shall, at its expense, take all action necessary or reasonably desirable to establish and maintain a valid and enforceable first priority perfected security interest in the Collateral, in each case free and clear of any Adverse Claim in favor of the Administrative Agent (on behalf of the Secured Parties), including taking such action to perfect, protect or more fully evidence the security interest of the Administrative Agent (on behalf of the Secured Parties) as the Administrative Agent or any Secured Party may reasonably request. In order to evidence the security interests of the Administrative Agent under this Agreement, the Servicer shall, from time to time take such action, or execute and deliver such instruments as may be necessary (including, without limitation, such actions as are reasonably requested by the Administrative Agent) to maintain and perfect, as a first-~~priority~~ interest, the Administrative Agent's security interest in the Receivables, Related Security and Collections. The Servicer shall, from time to time and within the time limits established by law, prepare and present to the Administrative Agent for the Administrative Agent's authorization and approval, all financing statements, amendments, continuations, or initial financing statements in lieu of a continuation statement or other filings necessary to continue, maintain and perfect the Administrative Agent's security interest as a first-~~priority~~ interest. The Administrative Agent's approval of such filings shall authorize the Servicer to file such financing statements under the UCC without the signature of the Borrower, any Originator or the Administrative Agent where allowed by Applicable Law. Except in connection with the Final Payout Date, notwithstanding anything else in the Transaction Documents to the contrary, the Servicer shall not have any authority to file a termination, partial termination,

release, partial release, or any amendment that deletes the name of a debtor or excludes collateral of any such financing statements filed in connection with the Transaction Documents, without the prior written consent of the Administrative Agent.

(m) *Further Assurances; Change in Name or Jurisdiction of Organization, etc.* The Servicer hereby authorizes and hereby agrees from time to time, at its own expense, promptly to execute (if necessary) and deliver all further instruments and documents, and to take all further actions, that may be necessary or desirable, or that the Administrative Agent may reasonably request, to perfect, protect or more fully evidence the security interest granted pursuant to this Agreement or any other Transaction Document, or to enable the Administrative Agent (on behalf of the Secured Parties) to exercise and enforce their respective rights and remedies under this Agreement or any other Transaction Document. Without limiting the foregoing, the Servicer hereby authorizes, and will, upon the request of the Administrative Agent, at the Servicer's own expense, execute (if necessary) and file such financing statements or continuation statements, or amendments thereto, and such other instruments and documents, that may be necessary or desirable, or that the Administrative Agent may reasonably request, to perfect, protect or evidence any of the foregoing.

(n) *Tax Election.* If the Borrower is classified as a partnership for U.S. federal income tax purposes, then as of the date that Sections 6221 through 6241 of the Code (as enacted by the Bipartisan Budget Act of 2015, P.L. 114-74), including any other Code provisions for the same subject matter, and any related regulations (adopted or proposed) and administrative guidance are first applicable to the Borrower, the Servicer (i) is designated as the partnership representative of the Borrower under Section 6223(a) of the Code to the extent allowed under law and (ii) will or will cause the Borrower, to the extent eligible, to make the election under Section 6221(b) of the Code for determinations of adjustments at the partnership level and take any other action necessary or appropriate for the election. If that election is not available, to the extent applicable, the Servicer will or will cause the Borrower to make the election under Section 6226(a) of the Code for the alternative to payment of imputed underpayment by a partnership and take any other action necessary or appropriate for the election.

(o) *Anti-Money Laundering/International Trade Law Compliance.* No Covered Entity will become a Sanctioned Person. None of the Borrower, the Servicer or any Originator, either in its own right or through any third party, will (a) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (c) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (d) use any Credit Extension to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law. The funds used to repay each Credit Extension will not be derived from any unlawful activity. The Servicer shall comply with all Anti-Terrorism Laws applicable to it. The Servicer shall promptly notify the Administrative Agent, the LC Bank and each **Program Participant Lender** in writing upon the occurrence of a Reportable Compliance Event with

respect to the Borrower, the Servicer, any Originator, or any Subsidiary thereof and upon becoming aware of the occurrence of a Reportable Compliance Event with respect to any other Covered Entity.

(p) *Credit Risk Retention.* The Servicer shall, and shall cause each Originator to, cooperate with each Credit Party (including by providing such information and entering into or delivering such additional agreements or documents reasonably requested by such Credit Party) to the extent reasonably necessary to assure such Credit Party that the Originators retain credit risk in the amount and manner required by the Credit Risk Retention Rules and to permit such Credit Party to perform its due diligence and monitoring obligations (if any) under the Credit Risk Retention Rules.

Section 8.03. Separate Existence of the Borrower. Each of the Borrower and the Servicer hereby acknowledges that the Secured Parties and the Administrative Agent are entering into the transactions contemplated by this Agreement and the other Transaction Documents in reliance upon the Borrower's identity as a legal entity separate from any Originator, the Servicer, the Performance Guarantor and their Affiliates. Therefore, each of the Borrower and Servicer shall take all steps specifically required by this Agreement or reasonably required by the Administrative Agent, the LC Bank or any ~~Program Participant~~Lender to continue the Borrower's identity as a separate legal entity and to make it apparent to third Persons that the Borrower is an entity with assets and liabilities distinct from those of the Performance Guarantor, the Originators, the Servicer and any other Person, and is not a division of the Performance Guarantor, the Originators, the Servicer, its Affiliates or any other Person. Without limiting the generality of the foregoing and in addition to and consistent with the other covenants set forth herein, each of the Borrower and the Servicer shall take such actions as shall be required in order that:

(a) *Special Purpose Entity.* The Borrower will be a special purpose company whose primary activities are restricted in its Articles of Organization or Operating Agreement to: (i) purchasing or otherwise acquiring from an Originator, owning, holding, granting security interests or selling interests in, the Collateral, (ii) entering into agreements for the selling, servicing and financing of the Receivables Pool (including the Transaction Documents) and (iii) conducting such other activities as it deems necessary or appropriate to carry out its primary activities.

(b) *No Other Business or Debt.* The Borrower shall not engage in any business or activity except as set forth in this Agreement nor, incur any indebtedness or liability other than as expressly permitted by the Transaction Documents.

(c) *Independent Director.* Not fewer than one member of the Borrower's board of directors (the "*Independent Director*") shall be a natural person who (i) has never been, and shall at no time be, an equityholder, director, officer, manager, member, partner, officer, employee or associate, or any relative of the foregoing, of any member of the Davey Tree Group (as hereinafter defined) (other than his or her service as an Independent Director of the Borrower or an independent director of any other bankruptcy-remote special purpose entity formed for the sole purpose of securitizing, or facilitating the securitization of, financial assets of any member or members of the Davey Tree Group), (ii) is not a customer or supplier of any member of the Davey Tree Group (other than his or

(j) *Books and Records.* The Borrower's books and records will be maintained separately from those of the Servicer, the Performance Guarantor, the Originators and any of their Affiliates and in a manner such that it will not be difficult or costly to segregate, ascertain or otherwise identify the assets and liabilities of the Borrower.

(k) *Disclosure of Transactions.* All financial statements of the Servicer, the Performance Guarantor, the Originators or any Affiliate thereof that are consolidated to include the Borrower will disclose that (i) the Borrower's sole business consists of the purchase or acceptance through capital contributions of the Receivables and Related Security from the Originators and the subsequent retransfer of or granting of a security interest in such Receivables and Related Security to the Administrative Agent pursuant to this Agreement, (ii) the Borrower is a separate legal entity with its own separate creditors who will be entitled, upon its liquidation, to be satisfied out of the Borrower's assets prior to any assets or value in the Borrower becoming available to the Borrower's equity holders and (iii) the assets of the Borrower are not available to pay creditors of the Servicer, the Performance Guarantor, the Originators or any Affiliate thereof.

(l) *Segregation of Assets.* The Borrower's assets will be maintained in a manner that facilitates their identification and segregation from those of the Servicer, the Performance Guarantor, the Originators or any Affiliates thereof.

(m) *Corporate Formalities.* The Borrower will strictly observe corporate formalities in its dealings with the Servicer, the Performance Guarantor, the Originators or any Affiliates thereof, and funds or other assets of the Borrower will not be commingled with those of the Servicer, the Performance Guarantor, the Originators or any Affiliates thereof except as permitted by this Agreement in connection with servicing the Pool Receivables. The Borrower shall not maintain joint bank accounts or other depository accounts to which the Servicer, the Performance Guarantor, the Originators or any Affiliate thereof (other than the Servicer solely in its capacity as such) has independent access. The Borrower is not named, and has not entered into any agreement to be named, directly or indirectly, as a direct or contingent beneficiary or loss payee on any insurance policy with respect to any loss relating to the property of the Servicer, the Performance Guarantor, the Originators or any Subsidiaries or other Affiliates thereof. The Borrower will pay to the appropriate Affiliate the marginal increase or, in the absence of such increase, the market amount of its portion of the premium payable with respect to any insurance policy that covers the Borrower and such Affiliate.

(n) *Arm's-~~Length~~ Relationships.* The Borrower will maintain arm's-~~length~~ relationships with the Servicer, the Performance Guarantor, the Originators and any Affiliates thereof. Any such Person that renders or otherwise furnishes services to the Borrower will be compensated by the Borrower at market rates for such services it renders or otherwise furnishes to the Borrower. Neither the Borrower on the one hand, nor the Servicer, the Performance Guarantor, any Originator or any Affiliate thereof, on the other hand, will be or will hold itself out to be responsible for the debts of the other or the decisions or actions respecting the daily business and affairs of the other. The Borrower, the Servicer, the Performance Guarantor, the Originators and their respective Affiliates will immediately correct any known misrepresentation with respect to the foregoing, and

they will not operate or purport to operate as an integrated single economic unit with respect to each other or in their dealing with any other entity.

(o) *Allocation of Overhead.* To the extent that Borrower, on the one hand, and the Servicer, the Performance Guarantor, any Originator or any Affiliate thereof, on the other hand, have offices in the same location, there shall be a fair and appropriate allocation of overhead costs between them, and the Borrower shall bear its fair share of such expenses, which may be paid through the Servicing Fee or otherwise.

ARTICLE IX

ADMINISTRATION AND COLLECTION OF RECEIVABLES

Section 9.01. Appointment of the Servicer. (a) The servicing, administering and collection of the Pool Receivables shall be conducted by the Person so designated from time to time as the Servicer in accordance with this Section 9.01. Until the Administrative Agent gives notice to Davey Tree (in accordance with this Section 9.01) of the designation of a new Servicer, Davey Tree is hereby designated as, and hereby agrees to perform the duties and obligations of, the Servicer pursuant to the terms hereof. Upon the occurrence of an Event of Default, the Administrative Agent may (with the consent of the LC Bank and Required **Program Participants**Lenders) and shall (at the direction of the LC Bank and Required **Program Participants**Lenders) designate as Servicer any Person (including itself) to succeed Davey Tree or any successor Servicer, on the condition in each case that any such Person so designated shall agree to perform the duties and obligations of the Servicer pursuant to the terms hereof.

(b) Upon the designation of a successor Servicer as set forth in clause (a) above, Davey Tree agrees that it will terminate its activities as Servicer hereunder in a manner that the Administrative Agent reasonably determines will facilitate the transition of the performance of such activities to the new Servicer, and Davey Tree shall cooperate with and assist such new Servicer. Such cooperation shall include access to and transfer of records (including all Contracts) related to Pool Receivables and use by the new Servicer of all licenses (or the obtaining of new licenses), hardware or software necessary or reasonably desirable to collect the Pool Receivables and the Related Security.

(c) Davey Tree acknowledges that, in making its decision to execute and deliver this Agreement, the Administrative Agent and each Credit Party have relied on Davey Tree's agreement to act as Servicer hereunder. Accordingly, Davey Tree agrees that it will not voluntarily resign as Servicer without the prior written consent of the Administrative Agent, the LC Bank and Required **Program Participants**Lenders.

(d) The Servicer may delegate its duties and obligations hereunder to any subservicer (each a "~~Sub-~~Servicer"); *provided*, that, in each such delegation: (i) such ~~Sub-~~Servicer shall agree in writing to perform the delegated duties and obligations of the Servicer pursuant to the terms hereof, (ii) the Servicer shall remain liable for the performance of the duties and obligations so delegated, (iii) the Borrower, the Administrative Agent, and each Credit Party shall have the right to look solely to the Servicer for performance, (iv) the terms of any agreement with any

Sub-~~servicer~~ shall provide that the Administrative Agent may terminate such agreement upon the termination of the Servicer hereunder by giving notice of its desire to terminate such agreement to the Servicer (and the Servicer shall provide appropriate notice to each such Sub-~~servicer~~), and (v) if such Sub-~~servicer~~ is not an Affiliate of the Servicer, the Administrative Agent, the LC Bank and Required ~~Program Participants~~ Lenders shall have consented in writing in advance to such delegation.

Section 9.02. Duties of the Servicer. (a) The Servicer shall take or cause to be taken all such action as may be necessary or reasonably advisable to service, administer and collect each Pool Receivable from time to time, all in accordance with this Agreement and all Applicable Laws, with reasonable care and diligence, and in accordance with the Credit and Collection Policy and consistent with the past practices of the Originators. The Servicer shall set aside, for the accounts of each Credit Party, the amount of Collections to which each such Credit Party is entitled in accordance with Article IV hereof. The Servicer may, in accordance with the Credit and Collection Policy and consistent with past practices of the Originators, take such action, including modifications, waivers or restructurings of Pool Receivables and related Contracts, as the Servicer may reasonably determine to be appropriate to maximize Collections thereof or reflect adjustments expressly permitted under the Credit and Collection Policy or as expressly required under Applicable Laws or the applicable Contract; *provided*, that for purposes of this Agreement: (i) such action shall not, and shall not be deemed to, change the number of days such Pool Receivable has remained unpaid from the date of the original invoice and/or due date related to such Pool Receivable, (ii) such action shall not alter the status of such Pool Receivable as a Delinquent Receivable or a Defaulted Receivable or limit the rights of any Secured Party under this Agreement or any other Transaction Document and (iii) if an Event of Default has occurred and is continuing, the Servicer may take such action only upon the prior written consent of the Administrative Agent. The Borrower shall deliver to the Servicer and the Servicer shall hold for the benefit of the Administrative Agent (individually and for the benefit of each Credit Party), in accordance with their respective interests, all records and documents (including computer tapes or disks) with respect to each Pool Receivable. Notwithstanding anything to the contrary contained herein, if an Event of Default has occurred and is continuing, the Administrative Agent may direct the Servicer to commence or settle any legal action to enforce collection of any Pool Receivable that is a Defaulted Receivable or to foreclose upon or repossess any Related Security with respect to any such Defaulted Receivable.

(b) The Servicer shall, as soon as reasonably practicable following actual receipt of collected funds, turn over to the Borrower the collections of any indebtedness that is not a Pool Receivable, less, if Davey Tree or an Affiliate thereof is not the Servicer, all reasonable and appropriate out-~~of~~-~~pocket~~ costs and expenses of such Servicer of servicing, collecting and administering such collections. The Servicer, if other than Davey Tree or an Affiliate thereof, shall, as soon as reasonably practicable upon written demand, deliver to the Borrower all records in its possession that evidence or relate to any indebtedness that is not a Pool Receivable, and copies of records in its possession that evidence or relate to any indebtedness that is a Pool Receivable.

(c) The Servicer's obligations hereunder shall terminate on the Final Payout Date. Promptly following the Final Payout date, the Servicer shall deliver to the Borrower all books, records and related materials that the Borrower previously provided to the Servicer, or that have been obtained by the Servicer, in connection with this Agreement.

Section 9.03. Collection Account Arrangements. Prior to the Closing Date, the Borrower shall have entered into Account Control Agreements with all of the Collection Account Banks and delivered executed counterparts of each Account Control Agreement to the Administrative Agent. Upon the occurrence and during the continuance of an Event of Default or the date that is five (5) Business Days prior to the date on which any Account Control Agreement will be terminated in accordance with a notice delivered to the Administrative Agent by any Collection Account Bank per the terms of such Account Control Agreement, the Administrative Agent may (with the consent of the LC Bank and Required ~~Program Participants~~Lenders) and shall (upon the direction of the LC Bank and Required ~~Program Participants~~Lenders) at any time thereafter give notice to each Collection Account Bank that the Administrative Agent is exercising its rights under the Account Control Agreements to do any or all of the following: (a) to have the exclusive ownership and control of the Collection Accounts transferred to the Administrative Agent (for the benefit of the Secured Parties) and to exercise exclusive dominion and control over the funds deposited therein, (b) to have the proceeds that are sent to the respective Collection Accounts redirected pursuant to the Administrative Agent's instructions rather than deposited in the applicable Collection Account, and (c) to take any or all other actions permitted under the applicable Account Control Agreement. The Borrower hereby agrees that if the Administrative Agent at any time takes any action set forth in the preceding sentence, the Administrative Agent shall have exclusive control (for the benefit of the Secured Parties) of the proceeds (including Collections) of all Pool Receivables and the Borrower hereby further agrees to take any other action that the Administrative Agent may reasonably request to transfer such control. Any proceeds of Pool Receivables received by the Borrower or the Servicer thereafter shall be sent immediately to, or as otherwise instructed by, the Administrative Agent.

Section 9.04. Enforcement Rights. (a) At any time following the occurrence and during the continuation of an Event of Default:

(i) the Administrative Agent (at the Borrower's expense) may direct the Obligor that payment of all amounts payable under any Pool Receivable is to be made directly to the Administrative Agent or its designee;

(ii) the Administrative Agent may instruct the Borrower or the Servicer to give notice of the Secured Parties' interest in Pool Receivables to each Obligor, which notice shall direct that payments be made directly to the Administrative Agent or its designee (on behalf of the Secured Parties), and the Borrower or the Servicer, as the case may be, shall give such notice at the expense of the Borrower or the Servicer, as the case may be; *provided*, that if the Borrower or the Servicer, as the case may be, fails to so notify each Obligor within two (2) Business Days following instruction by the Administrative Agent, the Administrative Agent (at the Borrower's or the Servicer's, as the case may be, expense) may so notify the Obligor;

(iii) the Administrative Agent may request the Servicer to, and upon such request the Servicer shall: (A) assemble all of the records necessary or desirable to collect the Pool Receivables and the Related Security, and transfer or license to a successor Servicer the use of all software necessary or desirable to collect the Pool Receivables and the Related Security, and make the same available to the Administrative Agent or its designee (for the benefit of the Secured Parties) at a place selected by the Administrative

Agent and (B) segregate all cash, checks and other instruments received by it from time to time constituting Collections in a manner reasonably acceptable to the Administrative Agent and, promptly upon receipt, remit all such cash, checks and instruments, duly endorsed or with duly executed instruments of transfer, to the Administrative Agent or its designee;

(iv) assume exclusive control of each Collection Account and notify the Collection Account Banks that the Borrower and the Servicer will no longer have any access to the Collection Accounts;

(v) the Administrative Agent may (or, at the direction of the LC Bank and Required ~~Program Participants~~ Lenders shall) replace the Person then acting as Servicer;

(vi) the Administrative Agent may collect any amounts due from an Originator under the Receivables Purchase Agreement or the Performance Guarantor under the Performance Guaranty; and

(vii) the Administrative Agent may cause Settlement Dates to occur as frequently as daily and apply all Collections to reduce the Borrower Obligations in accordance with the priorities set forth in Section 4.01.

(b) The Borrower hereby authorizes the Administrative Agent (on behalf of the Secured Parties), and irrevocably appoints the Administrative Agent as its attorney-~~in-fact~~ with full power of substitution and with full authority in the place and stead of the Borrower, which appointment is coupled with an interest, to take any and all steps in the name of the Borrower and on behalf of the Borrower necessary or desirable, in the reasonable determination of the Administrative Agent, after the occurrence and during the continuation of an Event of Default, to collect any and all amounts or portions thereof due under any and all Collateral, including endorsing the name of the Borrower on checks and other instruments representing Collections and enforcing such Collateral. Notwithstanding anything to the contrary contained in this subsection, none of the powers conferred upon such attorney-~~in-fact~~ pursuant to the preceding sentence shall subject such attorney-~~in-fact~~ to any liability if any action taken by it shall prove to be inadequate or invalid, nor shall they confer any obligations upon such attorney-~~in-fact~~ in any manner whatsoever.

(c) The Servicer hereby authorizes the Administrative Agent (on behalf of the Secured Parties), and irrevocably appoints the Administrative Agent as its attorney-~~in-fact~~ with full power of substitution and with full authority in the place and stead of the Servicer, which appointment is coupled with an interest, to take any and all steps in the name of the Servicer and on behalf of the Servicer necessary or desirable, in the reasonable determination of the Administrative Agent, after the occurrence and during the continuation of an Event of Default, to collect any and all amounts or portions thereof due under any and all Collateral, including endorsing the name of the Servicer on checks and other instruments representing Collections and enforcing such Collateral. Notwithstanding anything to the contrary contained in this subsection, none of the powers conferred upon such attorney-~~in-fact~~ pursuant to the preceding sentence shall subject such attorney-~~in-fact~~ to any liability if any action taken by it shall prove to be inadequate or invalid, nor shall they confer any obligations upon such attorney-~~in-fact~~ in any manner

reasonably satisfactory to the Administrative Agent shall have been appointed, or (iv) the Borrower, any Originator, the Performance Guarantor or the Servicer shall fail to perform or observe any term, covenant or agreement under this Agreement or any other Transaction Document to be performed or observed by the Borrower, such Originator or the Servicer, as applicable (other than any such failure which would constitute an Event of Default under another provision of this Section 10.01), and such failure, solely to the extent capable of cure, shall continue for five (5) Business Days; or

(b) any representation or warranty made or deemed made by the Borrower, any Originator, the Performance Guarantor or the Servicer (or any of their respective officers) under or in connection with this Agreement or any other Transaction Document or any information or report delivered by the Borrower, any Originator, the Performance Guarantor or the Servicer pursuant to this Agreement or any other Transaction Document, shall prove to have been incorrect or untrue in any material respect when made or deemed made or delivered;

(c) the Borrower or the Servicer shall fail to deliver an Information Package pursuant to this Agreement, and such failure shall remain unremedied for two (2) Business Days;

(d) (i) the Receivables Purchase Agreement ceases to create a valid and enforceable first priority perfected ownership interest in the Receivables, the Related Security or Collections in favor of the Borrower or (ii) this Agreement or any security interest granted pursuant to this Agreement or any other Transaction Document shall for any reason (other than through an affirmative action of the Administrative Agent) cease to create, or for any reason cease to be, a valid and enforceable first priority perfected security interest in favor of the Administrative Agent with respect to the Collateral, free and clear of any Adverse Claim;

(e) the Borrower, any Originator, the Performance Guarantor or the Servicer shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any Insolvency Proceeding shall be instituted by or against the Borrower, any Originator, the Performance Guarantor or the Servicer and, in the case of any such proceeding instituted against such Person (but not instituted by such Person), either such proceeding shall remain undismissed or unstayed for a period of thirty (30) consecutive days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Borrower, any Originator, the Performance Guarantor or the Servicer shall take any corporate or organizational action to authorize any of the actions set forth above in this paragraph;

(f) (i) the average for three (3) consecutive Fiscal Months of: (A) the Default Ratio shall exceed 5.00%, (B) the Delinquency Ratio shall exceed 12.50% or (C) the Dilution Ratio shall exceed 5.00%, or (ii) the Six-Month Average Days' Sales Outstanding shall exceed ~~60~~70 days for any Fiscal Month;

(g) a Change in Control shall occur;

(h) a Borrowing Base Deficit shall occur, and shall not have been cured within two (2) consecutive Business Days;

(i) (i) the Borrower shall fail to pay any principal of or premium or interest on any of its Debt (other than the Borrower Obligations and Debt under the Subordinated Notes) when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement, mortgage, indenture or instrument relating to such Debt (whether or not such failure shall have been waived under the related agreement); (ii) any Originator, the Performance Guarantor or the Servicer, or any of their respective Subsidiaries, individually or in the aggregate, shall fail to pay any principal of or premium or interest on any of its Debt that is outstanding in a principal amount in excess of \$5,000,000 in the aggregate when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement, mortgage, indenture or instrument relating to such Debt (whether or not such failure shall have been waived under the related agreement); or (iii) any other event shall occur or condition shall exist under any agreement, mortgage, indenture or instrument relating to any such Debt (as referred to in clause (i) or (ii) of this paragraph) and shall continue after the applicable grace period, if any, specified in such agreement, mortgage, indenture or instrument (whether or not such failure shall have been waived under the related agreement), if the effect of such event or condition is to give the applicable debtholders the right (whether acted upon or not) to accelerate the maturity of such Debt (as referred to in clause (i) or (ii) of this paragraph) or to terminate the commitment of any lender thereunder;

(j) the Performance Guarantor shall fail to perform any of its obligations under the Performance Guaranty and such failure continues beyond any applicable grace period;

(k) the Borrower shall fail (x) at any time (other than for ten (10) Business Days following notice of the death or resignation of any Independent Director) to have an Independent Director who satisfies each requirement and qualification specified in Section 8.03(c) of this Agreement for Independent Directors, on the Borrower's board of managers or (y) to timely notify the Administrative Agent of any replacement or appointment of any director that is to serve as an Independent Director on the Borrower's board of managers as required pursuant to Section 8.03(c) of this Agreement;

(l) there shall have occurred any event which materially adversely impairs, in the reasonable discretion of Administrative Agent, the collectability of the Pool Receivables generally or any material portion thereof;

(m) ~~any Letter of Credit is drawn upon and is not fully reimbursed by the Borrower within two (2) consecutive Business Days~~[reserved];

(n) either (i) the Internal Revenue Service shall file notice of a lien pursuant to

reputable and solvent insurance company) and such judgments and decrees either shall be final and non--appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of sixty (60) consecutive days, and the aggregate amount of all such judgments equals or exceeds \$1,000,000 (or solely with respect to the Borrower, \$13,500);

then, and in any such event, the Administrative Agent may (or, at the direction of the LC Bank and Required ~~Program-Participants~~Lenders shall) by notice to the Borrower (x) declare the Termination Date to have occurred (in which case the Termination Date shall be deemed to have occurred) and (y) declare the ~~Outstanding Reimbursement Obligations~~Aggregate Capital and all other Borrower Obligations to be immediately due and payable (in which case the ~~Outstanding Reimbursement Obligations~~Aggregate Capital and all other Borrower Obligations shall be immediately due and payable); *provided* that, automatically upon the occurrence of any event (without any requirement for the giving of notice) described in subsection (e) of this Section 10.01 with respect to the Borrower, the Termination Date shall occur and the ~~Outstanding Reimbursement Obligations~~Aggregate Capital and all other Borrower Obligations shall be immediately due and payable. Upon any such declaration or designation or upon such automatic termination, the Administrative Agent and the other Secured Parties shall have, in addition to the rights and remedies which they may have under this Agreement and the other Transaction Documents, all other rights and remedies provided after default under the UCC and under other Applicable Law, which rights and remedies shall be cumulative. Any proceeds from liquidation of the Collateral shall be applied in the order of priority set forth in Section 4.01.

ARTICLE XI

THE ADMINISTRATIVE AGENT

Section 11.01. Authorization and Action. Each Credit Party hereby appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto. The Administrative Agent shall not have any duties other than those expressly set forth in the Transaction Documents, and no implied obligations or liabilities shall be read into any Transaction Document, or otherwise exist, against the Administrative Agent. The Administrative Agent does not assume, nor shall it be deemed to have assumed, any obligation to, or relationship of trust or agency with, the Borrower or any Affiliate thereof or any Credit Party except for any obligations expressly set forth herein. Notwithstanding any provision of this Agreement or any other Transaction Document, in no event shall the Administrative Agent ever be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to any provision of any Transaction Document or Applicable Law.

Section 11.02. Administrative Agent's Reliance, Etc. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them as Administrative Agent under or in connection with this Agreement (including, without limitation, the Administrative Agent's servicing, administering or collecting Pool Receivables in the event it replaces the Servicer in such capacity pursuant to Section 9.01), in the absence of its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Administrative Agent: (a) may consult with legal counsel

(including counsel for any Credit Party or the Servicer), independent certified public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (b) makes no warranty or representation to any Credit Party (whether written or oral) and shall not be responsible to any Credit Party for any statements, warranties or representations (whether written or oral) made by any other party in or in connection with this Agreement; (c) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement on the part of any Credit Party or to inspect the property (including the books and records) of any Credit Party; (d) shall not be responsible to any Credit Party for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; and (e) shall be entitled to rely, and shall be fully protected in so relying, upon any notice (including notice by telephone), consent, certificate or other instrument or writing (which may be by facsimile) believed by it to be genuine and signed or sent by the proper party or parties.

Section 11.03. Administrative Agent and Affiliates. With respect to any Credit Extension or interests therein owned by any Credit Party that is also the Administrative Agent, such Credit Party shall have the same rights and powers under this Agreement as any other Credit Party and may exercise the same as though it were not the Administrative Agent. The Administrative Agent and any of its Affiliates may generally engage in any kind of business with the Borrower or any Affiliate thereof and any Person who may do business with or own securities of the Borrower or any Affiliate thereof, all as if the Administrative Agent were not the Administrative Agent hereunder and without any duty to account therefor to any other Secured Party.

Section 11.04. Indemnification of Administrative Agent. The LC Bank and each ~~Program Participant~~Lender agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower or any Affiliate thereof), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Administrative Agent in any way relating to or arising out of this Agreement or any other Transaction Document or any action taken or omitted by the Administrative Agent under this Agreement or any other Transaction Document; *provided* that ~~neither the LC Bank or Program Participant nor any~~Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's gross negligence or willful misconduct.

Section 11.05. Delegation of Duties. The Administrative Agent may execute any of its duties through agents or attorneys--~~in--~~fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys--~~in--~~fact selected by it with reasonable care.

Section 11.06. Action or Inaction by Administrative Agent. The Administrative Agent shall in all cases be fully justified in failing or refusing to take action under any Transaction Document unless it shall first receive such advice or concurrence of the LC Bank and Required ~~Program Participants~~Lenders and assurance of its indemnification by the LC Bank and Required ~~Program Participants~~Lenders, as it deems appropriate. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Transaction

Document in accordance with a request or at the direction of the LC Bank and Required ~~Program Participants~~Lenders, and such request or direction and any action taken or failure to act pursuant thereto shall be binding upon all Credit Parties. The Credit Parties and the Administrative Agent agree that unless any action to be taken by the Administrative Agent under a Transaction Document (i) specifically requires the advice or concurrence of the LC Bank and Required ~~Program Participants~~Lenders or (ii) may be taken by the Administrative Agent alone or without any advice or concurrence of the LC Bank and Required ~~Program Participants~~Lenders, then the Administrative Agent may take action based upon the advice or concurrence of the LC Bank and Required ~~Program Participants~~Lenders.

Section 11.07. Notice of Events of Default; Action by Administrative Agent. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Unmatured Event of Default or Event of Default unless the Administrative Agent has received notice from any Credit Party or the Borrower stating that an Unmatured Event of Default or Event of Default has occurred hereunder and describing such Unmatured Event of Default or Event of Default. If the Administrative Agent receives such a notice, it shall promptly give notice thereof to each Credit Party. The Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, concerning an Unmatured Event of Default or Event of Default or any other matter hereunder as the Administrative Agent deems advisable and in the best interests of the Secured Parties.

Section 11.08. Non-~~Reliance~~ on Administrative Agent and Other Parties. Each Credit Party expressly acknowledges that neither the Administrative Agent nor any of its directors, officers, agents or employees has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Borrower or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent. Each Credit Party represents and warrants to the Administrative Agent that, independently and without reliance upon the Administrative Agent or any other Credit Party and based on such documents and information as it has deemed appropriate, it has made and will continue to make its own appraisal of and investigation into the business, operations, property, prospects, financial and other conditions and creditworthiness of the Borrower, each Originator, the Performance Guarantor or the Servicer and the Pool Receivables and its own decision to enter into this Agreement and to take, or omit, action under any Transaction Document. Except for items expressly required to be delivered under any Transaction Document by the Administrative Agent to any Credit Party, the Administrative Agent shall not have any duty or responsibility to provide any Credit Party with any information concerning the Borrower, any Originator, the Performance Guarantor or the Servicer that comes into the possession of the Administrative Agent or any of its directors, officers, agents, employees, attorneys-~~in-~~fact or Affiliates.

Section 11.09. Successor Administrative Agent. (a) The Administrative Agent may, upon at least thirty (30) days' notice to the Borrower, the Servicer and each Credit Party, resign as Administrative Agent. Except as provided below, such resignation shall not become effective until a successor Administrative Agent is appointed by the LC Bank and Required ~~Program Participants~~Lenders as a successor Administrative Agent and has accepted such appointment. If no successor Administrative Agent shall have been so appointed by the LC Bank and Required ~~Program Participants~~Lenders, within thirty (30) days after the departing Administrative Agent's giving of notice of resignation, the departing Administrative Agent may, on behalf of the Secured

Parties, appoint a successor Administrative Agent as successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the LC Bank and Required ~~Program Participants~~ Lenders within sixty (60) days after the departing Administrative Agent's giving of notice of resignation, the departing Administrative Agent may, on behalf of the Secured Parties, petition a court of competent jurisdiction to appoint a successor Administrative Agent.

(b) Upon such acceptance of its appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall succeed to and become vested with all the rights and duties of the resigning Administrative Agent, and the resigning Administrative Agent shall be discharged from its duties and obligations under the Transaction Documents. After any resigning Administrative Agent's resignation hereunder, the provisions of this Article XI and Article XIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent.

Section 11.10. Structuring Agent. Each of the parties hereto hereby acknowledges and agrees that the Structuring Agent shall not have any right, power, obligation, liability, responsibility or duty under this Agreement. Each Credit Party acknowledges that it has not relied, and will not rely, on the Structuring Agent in deciding to enter into this Agreement and to take, or omit to take, any action under any Transaction Document.

ARTICLE XII

~~{RESERVED}~~

ARTICLE XIII

INDEMNIFICATION

Section 13.01. Indemnities by the Borrower. Without limiting any other rights that the Administrative Agent, the Credit Parties, the Affected Persons and their respective assigns, officers, directors, agents and employees (each, a "*Borrower Indemnified Party*") may have hereunder or under Applicable Law, the Borrower hereby agrees to indemnify each Borrower Indemnified Party from and against any and all claims, losses and liabilities (including Attorney Costs) (all of the foregoing being collectively referred to as "*Borrower Indemnified Amounts*") arising out of or resulting from this Agreement or any other Transaction Document or any Credit Extension or the security interest in respect of any Pool Receivable or any other Collateral; excluding, however, (x) Borrower Indemnified Amounts to the extent a final non-appealable judgment of a court of competent jurisdiction holds that such Borrower Indemnified Amounts resulted primarily from the gross negligence or willful misconduct by the Borrower Indemnified Party seeking indemnification, (y) Borrower Indemnified Amounts to the extent a final non-appealable judgment of a court of competent jurisdiction holds that such Borrower Indemnified Amounts result from a claim by the Borrower against a Borrower Indemnified Party for a material breach by such Borrower Indemnified Party of its obligations under any Transaction Document, and (z) Taxes that are covered by Section 5.03. Without limiting or being limited by the foregoing, the Borrower shall pay on written demand (which demand shall be accompanied by documentation of the Borrower Indemnified Amounts in reasonable detail) (it being understood that if any portion of such payment obligation is made from Collections, such payment will be

Transaction Document or the use of proceeds of any Credit Extension or in respect of any Pool Receivable or other Collateral or any related Contract;

(x) any failure of the Borrower to comply with its covenants, obligations and agreements contained in this Agreement or any other Transaction Document;

(xi) any setoff with respect to any Pool Receivable;

(xii) any claim brought by any Person other than a Borrower Indemnified Party arising from any activity by the Borrower or any Affiliate of the Borrower in servicing, administering or collecting any Pool Receivable;

(xiii) the failure by the Borrower to pay when due any taxes, including, without limitation, sales, excise or personal property taxes;

(xiv) any failure of a Collection Account Bank to comply with the terms of the applicable Account Control Agreement, the termination by a Collection Account Bank of any Account Control Agreement or any amounts payable by the Administrative Agent to a Collection Account Bank under any Account Control Agreement;

(xv) any dispute, claim, offset or defense (other than discharge in bankruptcy of the Obligor) of the Obligor to the payment of any Pool Receivable (including, without limitation, a defense based on such Pool Receivable or the related Contract not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms), or any other claim resulting from or relating to collection activities with respect to such Pool Receivable or the sale of goods or the rendering of services related to such Pool Receivable or the furnishing or failure to furnish any such goods or services or other similar claim or defense not arising from the financial inability of any Obligor to pay undisputed indebtedness;

(xvi) any action taken by the Administrative Agent as attorney-in-fact for the Borrower, any Originator or the Servicer pursuant to this Agreement or any other Transaction Document;

(xvii) [the use of proceeds of any Credit Extension or](#) the usage of any Letter of Credit; or

(xviii) any reduction in ~~Reimbursement Obligations~~[Capital](#) as a result of the distribution of Collections if all or a portion of such distributions shall thereafter be rescinded or otherwise must be returned for any reason.

(b) Notwithstanding anything to the contrary in this Agreement, solely for purposes of the Borrower's indemnification obligations in [clauses \(ii\), \(iii\), \(vi\) and \(x\)](#) of this [Article XIII](#), any representation, warranty or covenant qualified by the occurrence or non-occurrence of a material adverse effect or similar concepts of materiality shall be deemed to be not so qualified.

(c) If for any reason the foregoing indemnification is unavailable to any Borrower Indemnified Party or insufficient to hold it harmless, then the Borrower shall contribute to such

to any Pool Receivable or the related Contract;

(iii) any failure of the Servicer to comply with its covenants, obligations and agreements contained in this Agreement or any other Transaction Document to which it is a party in its capacity as Servicer; or

(iv) the commingling of Collections of Pool Receivables at any time with other funds.

(b) If for any reason the foregoing indemnification is unavailable to any Servicer Indemnified Party or insufficient to hold it harmless, then the Servicer shall contribute to the amount paid or payable by such Servicer Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of the Servicer on the one hand and such Servicer Indemnified Party on the other hand in the matters contemplated by this Agreement as well as the relative fault of the Servicer and such Servicer Indemnified Party with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Servicer under this Section shall be in addition to any liability which the Servicer may otherwise have, shall extend upon the same terms and conditions to Servicer Indemnified Party, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Servicer and the Servicer Indemnified Parties.

(c) Any indemnification or contribution under this Section 13.02 shall survive the termination of this Agreement.

ARTICLE XIV

MISCELLANEOUS

Section 14.01. Amendments, Etc. (a) No failure on the part of any Credit Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. No amendment or waiver of any provision of this Agreement or consent to any departure by any of the Borrower, the Servicer or any Affiliate thereof shall be effective unless in a writing signed by the Administrative Agent, the LC Bank and Required ~~Program Participants~~ Lenders (and, in the case of any amendment, also signed by the Borrower), and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no amendment, waiver or consent shall, unless in writing and signed by the Servicer, affect the rights or duties of the Servicer under this Agreement.

Section 14.02. Notices, Etc. All notices and other communications hereunder shall, unless otherwise stated herein, be in writing (which shall include facsimile communication) and faxed or delivered, to each party hereto, at its address set forth under its name on Schedule III hereto or at such other address as shall be designated by such party in a written notice to the other parties hereto. Notices and communications by facsimile shall be effective when sent (and shall be followed by hard copy sent by regular mail), and notices and communications sent by other means shall be effective when received.

Section 14.03. Participations.—(a) Assignability; Addition of Lenders; Participations. (a) Assignment by Lenders. Each Lender may assign to any Eligible Assignee or to any other Lender all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment and any Capital or interests therein owned by it); provided, however, that

(i) except for an assignment by a Lender to either an Affiliate of such Lender or any other Lender, each such assignment shall require the prior written consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that such consent shall not be required if an Event of Default or an Unmatured Event of Default has occurred and is continuing);

(ii) each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under this Agreement;

(iii) the amount being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance Agreement with respect to such assignment) shall in no event be less than the lesser of (x) \$5,000,000 and (y) all of the assigning Lender's Commitment; and

(iv) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, an Assignment and Acceptance Agreement.

Upon such execution, delivery, acceptance and recording from and after the effective date specified in such Assignment and Acceptance Agreement, (x) the assignee thereunder shall be a party to this Agreement, and to the extent that rights and obligations under this Agreement have been assigned to it pursuant to such Assignment and Acceptance Agreement, have the rights and obligations of a Lender hereunder and (y) the assigning Lender shall, to the extent that rights and obligations have been assigned by it pursuant to such Assignment and Acceptance Agreement, relinquish such rights and be released from such obligations under this Agreement (and, in the case of an Assignment and Acceptance Agreement covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(b) Register. The Administrative Agent shall, acting solely for this purpose as an agent of the Borrower, maintain at its address referred to on Schedule III of this Agreement (or such other address of the Administrative Agent notified by the Administrative Agent to the other parties hereto) a copy of each Assignment and Acceptance Agreement delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders, the Commitment of each Lender and the aggregate Capital (and stated Interest) of each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Servicer, the Administrative Agent, and the other Credit Parties may treat each Person whose name is recorded in the Register as a Lender under this Agreement for all purposes of this Agreement. The Register shall be available for inspection by

the Borrower, the LC Bank, or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(c) Procedure. Upon its receipt of an Assignment and Acceptance Agreement executed and delivered by an assigning Lender and an Eligible Assignee or assignee Lender, as applicable, the Administrative Agent shall, if such Assignment and Acceptance Agreement has been duly completed, (i) accept such Assignment and Acceptance Agreement, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Borrower and the Servicer.

(d) Participations. The LC Bank and each Lender may sell participations to one or more Eligible Assignees (each, a “Participant”) in or to all or a portion of its rights and/or obligations under this Agreement (including, without limitation, all or a portion of its Commitment and the interests in the ~~Reimbursement Obligations~~ Capital owned by it); *provided, however*, that:

(i) the LC Bank’s or such Lender’s obligations under this Agreement (including, without limitation, its Commitment to the Borrower hereunder) shall remain unchanged, and

(ii) the LC Bank’s or such Lender’s shall remain solely responsible to the other parties to this Agreement for the performance of such obligations.

The Administrative Agent, the LC Bank, the Lenders, the Borrower and the Servicer shall have the right to continue to deal solely and directly with the LC Bank or such Lender in connection with the LC Bank’s or such Lender’s rights and obligations under this Agreement.

(be) Participant Register. The LC Bank and each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the ~~Reimbursement Obligations~~ Capital or other obligations under this Agreement (the “Participant Register”); *provided that* neither the LC Bank nor any Lender shall ~~not~~ 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 this Agreement) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f. ~~103-1~~ 103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the LC Bank and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ef) Assignments by Administrative Agent. This Agreement and the rights and obligations of the Administrative Agent herein shall be assignable by the Administrative Agent and its successors and assigns; *provided that* in the case of an assignment to a Person that is neither an Affiliate of the Administrative Agent nor the LC Bank nor any Lender hereunder, so long as no

Event of Default or Unmatured Event of Default has occurred and is continuing, such assignment shall require the Borrower's consent (not to be unreasonably withheld, conditioned or delayed).

(dg) *Assignments by the Borrower or the Servicer.* Neither the Borrower nor, except as provided in Section 9.01, the Servicer may assign any of its respective rights or obligations hereunder or any interest herein without the prior written consent of the Administrative Agent, the LC Bank and Required ~~Program Participants~~Lenders (such consent to be provided or withheld in the sole discretion of such Person).

(eh) *Pledge to a Federal Reserve Bank.* Notwithstanding anything to the contrary set forth herein, (i) any Credit Party or any of their respective Affiliates may at any time pledge or grant a security interest in all or any portion of its interest in, to and under this Agreement (including, without limitation, rights to payment of ~~Reimbursement Obligations~~Capital and Interest) and any other Transaction Document to secure its obligations to a Federal Reserve Bank, without notice to or the consent of the Borrower, the Servicer, any Affiliate thereof or any Credit Party; *provided*, however, that that no such pledge shall relieve such assignor of its obligations under this Agreement.

(fi) *Transfer Restriction.* No right or obligation of the LC Bank may be transferred or assigned other than through the Register or Participant Register, as applicable. Any attempt to transfer an interest of the LC Bank other than through the Register or Participant Register, as applicable, will not be recognized by the Borrower or the Administrative Agent.

Section 14.04. Costs and Expenses. In addition to the rights of indemnification granted under Section 13.01 hereof, the Borrower agrees to pay on written demand (which demand shall be accompanied by documentation thereof in reasonable detail) all reasonable out-of-pocket costs and expenses in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Transaction Documents (together with all amendments, restatements, supplements, consents and waivers, if any, from time to time hereto and thereto), including, without limitation, (i) the reasonable Attorney Costs for the Administrative Agent and the other Credit Parties and any of their respective Affiliates with respect thereto and with respect to advising the Administrative Agent and the other Credit Parties and their respective Affiliates as to their rights and remedies under this Agreement and the other Transaction Documents and (ii) reasonable accountants', auditors' and consultants' fees and expenses for the Administrative Agent and the other Credit Parties and any of their respective Affiliates incurred in connection with the administration and maintenance of this Agreement or advising the Administrative Agent or any other Credit Party as to their rights and remedies under this Agreement or as to any actual or reasonably claimed breach of this Agreement or any other Transaction Document. In addition, the Borrower agrees to pay on written demand (which demand shall be accompanied by documentation thereof in reasonable detail) all reasonable out-of-pocket costs and expenses (including reasonable Attorney Costs), of the Administrative Agent and the other Credit Parties and their respective Affiliates, incurred in connection with the enforcement of any of their respective rights or remedies under the provisions of this Agreement and the other Transaction Documents.

Section 14.05. No Proceedings. The Servicer hereby covenants and agrees that it will not institute against, or join any other Person in instituting against, the Borrower any Insolvency

Proceeding until one year and one day after the Final Payout Date; *provided*, that the Administrative Agent may take any such action in its sole discretion following the occurrence of an Event of Default.

Section 14.06. Confidentiality. (a) Each of the Borrower and the Servicer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Agreement (including any fees payable in connection with this Agreement or any other Transaction Document or the identity of the Administrative Agent or any other Credit Party), except as the Administrative Agent, the LC Bank and Required ~~Program Participants~~Lenders may have consented to in writing prior to any proposed disclosure; provided, however, that it may disclose such information (i) to its Advisors and Representatives, (ii) to the extent such information has become available to the public other than as a result of a disclosure by or through the Borrower, the Servicer or their Advisors and Representatives or (iii) to the extent it should be (A) required by Applicable Law, or in connection with any legal or regulatory proceeding or (B) requested by any Governmental Authority to disclose such information; provided, that, in the case of clause (iii) above, the Borrower and the Servicer will use reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by Applicable Law) notify the Administrative Agent and the affected Credit Party of its intention to make any such disclosure prior to making such disclosure. Each of the Borrower and the Servicer agrees to be responsible for any breach of this Section by its Representatives and Advisors and agrees that its Representatives and Advisors will be advised by it of the confidential nature of such information and shall agree to comply with this Section. Notwithstanding the foregoing, it is expressly agreed that each of the Borrower, the Servicer and their respective Affiliates may publish a press release or otherwise publicly announce the existence and principal amount of the Commitments under this Agreement and the transactions contemplated hereby; *provided* that the Administrative Agent shall be provided a reasonable opportunity to review such press release or other public announcement prior to its release and provide comment thereon; and provided, further, that no such press release shall name or otherwise identify the Administrative Agent, any other Credit Party or any of their respective Affiliates without such Person's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, the Borrower consents to the publication by the Administrative Agent or any other Credit Party of a tombstone or similar advertising material relating to the financing transactions contemplated by this Agreement.

(b) Each of the Administrative Agent and each other Credit Party, severally and with respect to itself only, agrees to hold in confidence, and not disclose to any Person, any confidential and proprietary information concerning the Borrower, the Servicer and their respective Affiliates and their businesses or the terms of this Agreement (including any fees payable in connection with this Agreement or the other Transaction Documents), except as the Borrower or the Servicer may have consented to in writing prior to any proposed disclosure; provided, however, that it may disclose such information (i) to its Advisors and Representatives, (ii) to its assignees and Participants and potential assignees and Participants and their respective counsel if they agree in writing to hold it confidential, (iii) to the extent such information has become available to the public other than as a result of a disclosure by or through it or its Representatives or Advisors, (iv) at the request of a bank examiner or other regulatory authority or in connection with an examination of any of the Administrative Agent, the LC Bank, any ~~Program Participant~~Lender or their respective Affiliates or (v) to the extent it should be (A) required by Applicable Law, or in connection with any legal or regulatory proceeding or (B) requested by any Governmental

Authority to disclose such information; *provided*, that, in the case of clause (v) above, the Administrative Agent, the LC Bank and each ~~Program Participant~~Lender will use reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by Applicable Law) notify the Borrower and the Servicer of its making any such disclosure as promptly as reasonably practicable thereafter. Each of the Administrative Agent, the LC Bank and each ~~Program Participant~~Lender, severally and with respect to itself only, agrees to be responsible for any breach of this Section by its Representatives and Advisors and agrees that its Representatives and Advisors will be advised by it of the confidential nature of such information and shall agree to comply with this Section.

(c) As used in this Section, (i) “Advisors” means, with respect to any Person, such Person’s accountants, attorneys and other confidential advisors and (ii) “Representatives” means, with respect to any Person, such Person’s Affiliates, Subsidiaries, directors, managers, officers, employees, members, investors, financing sources (other than any Credit Party), insurers, professional advisors, representatives and agents; *provided* that such Persons shall not be deemed to Representatives of a Person unless (and solely to the extent that) confidential information is furnished to such Person.

(d) Notwithstanding the foregoing, to the extent not inconsistent with applicable securities laws, each party hereto (and each of its employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure (as defined in Section 1.6011-4 of the Treasury Regulations) of the transactions contemplated by the Transaction Documents and all materials of any kind (including opinions or other tax analyses) that are provided to such Person relating to such tax treatment and tax structure.

Section 14.07. GOVERNING LAW. THIS AGREEMENT, INCLUDING THE RIGHTS AND DUTIES OF THE PARTIES HERETO, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTIONS ~~5-1401~~5-1401 AND ~~5-1402~~5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BUT WITHOUT REGARD TO ANY OTHER CONFLICTS OF LAW PROVISIONS THEREOF, EXCEPT TO THE EXTENT THAT THE PERFECTION, THE EFFECT OF PERFECTION OR PRIORITY OF THE INTERESTS OF ADMINISTRATIVE AGENT, THE LC BANK OR ANY ~~PROGRAM PARTICIPANT~~LENDER IN THE COLLATERAL IS GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK).

Section 14.08. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart hereof by facsimile or other electronic means shall be equally effective as delivery of an originally executed counterpart.

Section 14.09. Integration; Binding Effect; Survival of Termination. This Agreement and the other Transaction Documents contain the final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement among the parties hereto with respect to the subject matter hereof superseding all prior oral or written understandings. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its

connection herewith or therewith; and each of the Borrower and the Servicer hereby waives, releases, and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. None of the Credit Parties and their respective Affiliates shall have any liability to the Borrower or any Affiliate thereof or any other Person asserting claims on behalf of or in right of the Borrower or any Affiliate thereof in connection with or as a result of this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby, except to the extent that any losses, claims, damages, liabilities or expenses incurred by the Borrower or any Affiliate thereof result from the breach of contract, gross negligence or willful misconduct of such Credit Party in performing its duties and obligations hereunder and under the other Transaction Documents to which it is a party.

(b) The obligations of the Administrative Agent and each of the other Credit Parties under this Agreement and each of the Transaction Documents are solely the corporate obligations of such Person. No recourse shall be had for any obligation or claim arising out of or based upon this Agreement or any other Transaction Document against any member, director, officer, employee or incorporator of any such Person.

Section 14.14. Intent of the Parties. The Borrower has structured this Agreement with the intention that the Capital, the issuance and usage of Letters of Credit, ~~the Reimbursement Obligations~~ and the other obligations of the Borrower hereunder will be treated under United States federal, and applicable state, local and foreign tax law as debt (the “*Intended Tax Treatment*”). The Borrower, the Servicer, the Administrative Agent and the other Credit Parties agree to file no tax return, or take any action, inconsistent with the Intended Tax Treatment unless required by applicable law. Each assignee and each Participant acquiring an interest in a Credit Extension, by its acceptance of such assignment or participation, agrees to comply with the immediately preceding sentence.

Section 14.15. USA Patriot Act. Each of the Administrative Agent and each of the other Credit Parties hereby notifies the Borrower and the Servicer that pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. ~~107-56~~107-56 (signed into law October 26, 2001) (the “*Patriot Act*”), the Administrative Agent and the other Credit Parties may be required to obtain, verify and record information that identifies the Borrower, the Originators, the Servicer and the Performance Guarantor, which information includes the name, address, tax identification number and other information regarding the Borrower, the Originators, the Servicer and the Performance Guarantor that will allow the Administrative Agent and the other Credit Parties to identify the Borrower, the Originators, the Servicer and the Performance Guarantor in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act. Each of the Borrower and the Servicer agrees to provide the Administrative Agent and each other Credit Party, from time to time, with all documentation and other information required by bank regulatory authorities under “know your customer” and anti-~~money~~ laundering rules and regulations, including, without limitation, the Patriot Act.

Section 14.16. Right of Setoff. Each Credit Party is hereby authorized (in addition to any other rights it may have), at any time during the continuance of an Event of Default, to setoff, appropriate and apply (without presentment, demand, protest or other notice which are hereby expressly waived) any deposits and any other indebtedness held or owing by such Credit Party (including by any branches or agencies of such Credit Party) to, or for the account of, the Borrower

or the Servicer against amounts owing by the Borrower or the Servicer hereunder (even if contingent or unmaturred); *provided* that such Credit Party shall notify the Borrower or the Servicer, as applicable, promptly following such setoff.

Section 14.17. Severability. Any provisions of this Agreement which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 14.18. Mutual Negotiations. This Agreement and the other Transaction Documents are the product of mutual negotiations by the parties thereto and their counsel, and no party shall be deemed the draftsperson of this Agreement or any other Transaction Document or any provision hereof or thereof or to have provided the same. Accordingly, in the event of any inconsistency or ambiguity of any provision of this Agreement or any other Transaction Document, such inconsistency or ambiguity shall not be interpreted against any party because of such party's involvement in the drafting thereof.

Section 14.19. Captions and Cross References. The various captions (including the table of contents) in this Agreement are provided solely for convenience of reference and shall not affect the meaning or interpretation of any provision of this Agreement. Unless otherwise indicated, references in this Agreement to any Section, Schedule or Exhibit are to such Section, Schedule or Exhibit to this Agreement, as the case may be, and references in any Section, subsection, or clause to any subsection, clause or subclause are to such subsection, clause or subclause of such Section, subsection or clause.

{SIGNATURE PAGES FOLLOW}

PNC BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____
Name: _____
Title: _____

PNC BANK, NATIONAL ASSOCIATION,
as [the](#) LC Bank [and as a Lender](#)

By: _____
Name: _____
Title: _____

PNC CAPITAL MARKETS LLC,
as Structuring Agent

By: _____
-Name: _____
-Title: _____

EXHIBIT A

FORM OF [LOAN REQUEST] [LC REQUEST]

[Letterhead of Borrower]

[Date]

[Administrative Agent]

Re: [Loan Request] [LC Request]

Ladies and Gentlemen:

Reference is hereby made to that certain Receivables Financing Agreement, dated as of May 9, 2016, among Davey Receivables LLC (the “*Borrower*”), The Davey Tree Expert Company, as Servicer (the “*Servicer*”), the Lenders party thereto and PNC Bank, National Association, as Administrative Agent (in such capacity, the “*Administrative Agent*”) and as the LC Bank (as amended, supplemented or otherwise modified from time to time, the “*Agreement*”). Capitalized terms used in this [Loan Request] [LC Request] and not otherwise defined herein shall have the meanings assigned thereto in the Agreement.

[This letter constitutes a Loan Request pursuant to Section 2.02(a) of the Agreement. The Borrower hereby request a Loan in the amount of [\$ _____] to be made on [_____, 20__]. The proceeds of such Loan should be deposited to [Account number], at [Name, Address and ABA Number of Bank]. After giving effect to such Loan, the Aggregate Capital will be [\$_____].]

[This letter constitutes an LC Request pursuant to Section 3.02(a) of the Agreement. The Borrower hereby request that the LC Bank issue a Letter of Credit with a face amount of [\$ _____] on [_____, 20120_]. After giving effect to such issuance, the LC Amount will be [\$_____].]

The Borrower hereby represents and warrants as of the date hereof, and after giving effect to ~~the issuance of~~ such ~~Letter of~~ Credit Extension, as follows:

(i) the representations and warranties of the Borrower and the Servicer contained in Sections 7.01 and 7.02 of the Agreement are true and correct in all material respects on and as of the date ~~of issuance~~ of such ~~Letter of~~ Credit Extension as though made on and as of such date unless such representations and warranties by their terms refer to an earlier date, in which case they shall be true and correct in all material respects on and as of such earlier date;

(ii) no Event of Default or Unmatured Event of Default has occurred and is continuing, and no Event of Default or Unmatured Event of Default would result from ~~the issuance of~~ such ~~Letter of~~ Credit Extension;

(iii) no Borrowing Base Deficit exists or would exist after giving effect to ~~the issuance of~~ such ~~Letter of~~ Credit Extension; and

(iv) the Termination Date has not occurred.

IN WITNESS WHEREOF, the undersigned has executed this letter by its duly authorized officer as of the date first above written.

Very truly yours,

DAVEY RECEIVABLES LLC

By: _____

Name: _____

Title: _____

EXHIBIT C

{RESERVED}

EXHIBIT G

FORM OF COMPLIANCE CERTIFICATE

To: PNC Bank, National Association, as Administrative Agent

This Compliance Certificate is furnished pursuant to that certain Receivables Financing Agreement, dated as of May 9, 2016, among Davey Receivables LLC (the “*Borrower*”), The Davey Tree Expert Company, as Servicer (the “*Servicer*”), [the Lenders party thereto](#) and PNC Bank, National Association, as Administrative Agent (in such capacity, the “*Administrative Agent*”) and as the LC Bank (as amended, supplemented or otherwise modified from time to time, the “*Agreement*”). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

The undersigned hereby certifies that:

1. I am the duly elected _____ of the Servicer.
2. I have reviewed the terms of the Agreement and each of the other Transaction Documents and I have made, or have caused to be made under my supervision, a detailed review of the transactions and condition of the Borrower during the accounting period covered by the attached financial statements.
3. The examinations described in paragraph 2 above did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes an Event of Default or an Unmatured Event of Default, as each such term is defined under the Agreement, during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate[, except as set forth in paragraph 5 below].
4. Schedule I attached hereto sets forth financial statements of the Servicer and its Subsidiaries for the period referenced on such Schedule I.
- [5. Described below are the exceptions, if any, to paragraph 3 above by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which Servicer has taken, is taking, or proposes to take with respect to each such condition or event:]

The foregoing certifications are made and delivered this _____ day of _____,
~~2012~~202 .

THE DAVEY TREE EXPERT COMPANY

By: _____
Name: _____
Title: _____

**SCHEDULE I
TO COMPLIANCE CERTIFICATE**

A. Schedule of Compliance as of _____, ~~201~~202 with Section(s) _____ of the Agreement. Unless otherwise defined herein, the terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

This schedule relates to the [quarter] [fiscal year] ended: _____.

B. The following financial statements of the Servicer and its Subsidiaries for the period ending on _____, ~~201~~202, are attached hereto:

EXHIBIT I

FORM OF AGGREGATE COMMITMENT INCREASE REQUEST

_____, ~~201~~202

To: PNC BANK, NATIONAL ASSOCIATION, as Administrative Agent for the LC Bank and ~~LC Bank~~ the Lenders party to the Receivables Financing Agreement dated as of May 9, 2016 (as extended, renewed, amended or restated from time to time, the “*Financing Agreement*”), among Davey Receivables LLC (the “*Borrower*”), The Davey Tree Expert Company, as initial Servicer, the LC Bank thereunder, the Lenders from time to time thereto, PNC Capital Markets LLC, as Structuring Agent and PNC Bank, National Association, as Administrative Agent. Capitalized terms defined in the Financing Agreement are used herein with the same meanings.

Ladies and Gentlemen:

The undersigned, Davey Receivables LLC (the “*Borrower*”) hereby refers to the Financing Agreement and requests that the Administrative Agent, the LC Bank and each ~~Program Participant~~ Lender consent to an increase in the Facility Limit (the “*Aggregate Facility Limit Increase*”), in accordance with Section ~~3.112.05~~ of the Financing Agreement, to be effected by an increase in the Commitment of the LC Bank or such Lender, as applicable, under the terms of the Financing Agreement.

The Borrower requests that the Aggregate Facility Limit Increase become effective on _____, ~~201~~202¹ (the “*Aggregate Facility Limit Increase Date*”), and after giving effect to such requested Aggregate Facility Limit Increase, the Commitment of the LC Bank and each Lender shall be \$ _____ and \$ _____, respectively.

The requested Aggregate Facility Limit Increase shall be effective on the later of (i) the Aggregate Facility Limit Increase Date and (ii) the date on which the executed consent of the Administrative Agent, the LC Bank and each ~~Program Participant~~ Lender to this Aggregate Facility Limit Increase is received and the conditions to any such increase in the Facility Limit set forth in Section 3.112.05 of the Financing Agreement are satisfied. It shall be a condition to the effectiveness of the Aggregate Facility Limit Increase that all expenses referred to in Section 3.112.05 of the Financing Agreement shall have been paid to the extent invoiced. Upon the satisfaction of the conditions to such Aggregate Facility Limit Increase, the Borrower hereby agrees to pay to the LC Bank and the Lenders a fee equal to [\$ _____] on or before the date on which the requested Aggregate Facility Limit Increase becomes effective.

The Borrower hereby certifies that no Unmatured Event of Default or Event of Default has occurred and is continuing and that each of the conditions precedent to Credit Extensions set forth in Section 6.02 of the Financing Agreement are satisfied as of the date hereof and shall be satisfied

¹ To be at least 10 Business Days after the date of the delivery of the Aggregate Facility Limit Increase Request.

immediately after giving effect to such Aggregate Facility Limit Increase.

Please indicate the Administrative Agent's, the LC Bank's and each **Program Participant Lender**'s consent to such Aggregate Commitment Increase by signing the enclosed copy of this letter in the space provided below. THIS AGGREGATE COMMITMENT INCREASE REQUEST, INCLUDING THE RIGHTS AND DUTIES OF THE PARTIES HERETO, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTIONS ~~5-1401~~5-1401 AND ~~5-1402~~5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BUT WITHOUT REGARD TO ANY OTHER CONFLICTS OF LAW PROVISIONS THEREOF.

{SIGNATURE PAGE FOLLOWS}

Very truly yours,

DAVEY RECEIVABLES LLC

By: _____
Name: _____
Title: _____

The undersigned hereby consents on this ___ day of _____, ~~201~~202 to the above-requested Aggregate Facility Limit Increase.

PNC BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____
Name: _____
Title: _____

PNC BANK, NATIONAL ASSOCIATION,
as the LC Bank and a Lender

By: _____
Name: _____
Title: _____

[LENDERS]

EXHIBIT J

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

Dated as of _____, 20__

SECTION 1.

<u>Commitment assigned:</u>	\$[_____]
<u>Assignor's remaining Commitment:</u>	\$[_____]
<u>Capital allocable to Commitment assigned:</u>	\$[_____]
<u>Assignor's remaining Capital:</u>	\$[_____]
<u>Interest (if any) allocable to Capital assigned:</u>	\$[_____]
<u>Interest (if any) allocable to Assignor's remaining Capital:</u>	\$[_____]

SECTION 2.

Effective Date of this Assignment and Acceptance Agreement: [_____]

Upon execution and delivery of this Assignment and Acceptance Agreement by the assignee and the assignor and the satisfaction of the other conditions to assignment specified in Section 14.03(b) of the Agreement (as defined below), from and after the effective date specified above, the assignee shall become a party to, and, to the extent of the rights and obligations thereunder being assigned to it pursuant to this Assignment and Acceptance Agreement, shall have the rights and obligations of a Lender under that certain Receivables Financing Agreement, dated as of May 9, 2016 among Davey Receivables LLC (the "*Borrower*"), The Davey Tree Expert Company, as Servicer (the "*Servicer*"), the Lenders party thereto and PNC Bank, National Association, as Administrative Agent (in such capacity, the "*Administrative Agent*"), the Lender and as the LC Bank (as amended, supplemented or otherwise modified from time to time, the "*Agreement*").

SIGNATURE PAGES FOLLOW

ASSIGNOR: [_____]

By: _____

Name: _____

Title: _____

ASSIGNEE: [_____]

By: _____

Name: _____

Title: _____

[Address]

Accepted as of date first above written:

PNC BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____

Name: _____

Title: _____

DAVEY RECEIVABLES LLC,
as Borrower

By: _____

Name: _____

Title: _____