UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-Q

(Mark One)

☒ **Quarterly Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934**

For the quarterly period ended September 28, 2019

or

☐ **Transition Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934**

For the transition period from __ __ __ __ to __ __ __ __

Commission File Number 1-10948

Office Depot, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**59-2663954**
(State or Other Jurisdiction of Incorporation or Organization)	**(IRS Employer Identification No.)**
6600 North Military Trail, Boca Raton, Florida	**33496**
(Address of Principal Executive Offices)	**(Zip Code)**

(561) 438-4800
(Registrant's Telephone Number, Including Area Code)

(Former Name, Former Address and Former Fiscal Year, If Changed Since Last Report)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on which Registered
Common Stock, par value $0.01 per share	**ODP**	**The NASDAQ Stock Market (NASDAQ Global Select Market)**

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

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

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

Large accelerated filer	☒	Accelerated filer	☐	Non-accelerated filer	☐
Smaller reporting company	☐	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. ☐

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

The number of shares outstanding of the registrant's common stock, as of the latest practicable date: At October 30, 2019, there were 546,484,255 outstanding shares of Office Depot, Inc. Common Stock, $0.01 par value.

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The order and presentation of this Quarterly Report on Form 10-Q ("Form 10-Q") differ from that of the traditional U.S. Securities and Exchange Commission ("SEC") Form 10-Q format. We believe our format better presents the relevant sections of this document and enhances readability. See "Form 10-Q Cross Reference Index" within "Other Information" for a cross reference index to the traditional SEC Form 10-Q format.

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OFFICE DEPOT, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In millions, except per share amounts)
(Unaudited)

	13 Weeks Ended		39 Weeks Ended	
	September 28, 2019	September 29, 2018	**September 28, 2019**	September 29, 2018
Sales:				
Products	**$ 2,377**	$ 2,453	**$ 6,921**	$ 7,072
Services	**405**	434	**1,218**	1,273
Total sales	**2,782**	2,887	**8,139**	8,345
Cost of goods and occupancy costs:				
Products	**1,840**	1,906	**5,412**	5,534
Services	**275**	295	**834**	862
Total cost of goods and occupancy costs	**2,115**	2,201	**6,246**	6,396
Gross profit	**667**	686	**1,893**	1,949
Selling, general and administrative expenses	**532**	567	**1,621**	1,674
Asset impairments	**5**	—	**50**	—
Merger and restructuring expenses, net	**22**	14	**105**	45
Operating income	**108**	105	**117**	230
Other income (expense):				
Interest income	**5**	7	**16**	18
Interest expense	**(22)**	(31)	**(68)**	(91)
Other income, net	**2**	4	**7**	11
Income from continuing operations before income taxes	**93**	85	**72**	168
Income tax expense	**33**	25	**28**	55
Net income from continuing operations	**60**	60	**44**	113
Discontinued operations, net of tax	**—**	—	**—**	5
Net income	**$ 60**	$ 60	**$ 44**	$ 118
Basic earnings per common share				
Continuing operations	**$ 0.11**	$ 0.11	**$ 0.08**	$ 0.20
Discontinued operations	**—**	—	**—**	0.01
Net basic earnings per common share	**$ 0.11**	$ 0.11	**$ 0.08**	$ 0.21
Diluted earnings per common share				
Continuing operations	**$ 0.11**	$ 0.11	**$ 0.08**	$ 0.20
Discontinued operations	**—**	—	**—**	0.01
Net diluted earnings per common share	**$ 0.11**	$ 0.11	**$ 0.08**	$ 0.21

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the Office Depot, Inc. Annual Report on Form 10-K filed on February 27, 2019 (the "2018 Form 10-K").

OFFICE DEPOT, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In millions)
(Unaudited)

	13 Weeks Ended		39 Weeks Ended	
	September 28, 2019	September 29, 2018	**September 28, 2019**	September 29, 2018
Net income	**$ 60**	$ 60	**$ 44**	$ 118
Other comprehensive income (loss), net of tax, where applicable:				
Foreign currency translation adjustments	**(9)**	3	**6**	(16)
Reclassification of foreign currency translation adjustments realized upon disposal of business	**—**	—	**—**	29
Other	**—**	—	**1**	—
Total other comprehensive income (loss), net of tax, where applicable	**(9)**	3	**7**	13
Comprehensive income	**$ 51**	$ 63	**$ 51**	$ 131

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the 2018 Form 10-K.

OFFICE DEPOT, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In millions, except share and per share amounts)

	September 28, 2019 (Unaudited)	December 29, 2018
ASSETS		
Current assets:		
Cash and cash equivalents	**$ 588**	$ 658
Receivables, net	**919**	885
Inventories	**1,025**	1,065
Prepaid expenses and other current assets	**103**	75
Timber notes receivable, current maturities	**825**	—
Total current assets	**3,460**	2,683
Property and equipment, net	**699**	763
Operating lease right-of-use assets	**1,374**	—
Goodwill	**938**	914
Other intangible assets, net	**395**	422
Timber notes receivable	**—**	842
Deferred income taxes	**220**	284
Other assets	**257**	258
Total assets	**$ 7,343**	$ 6,166
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Trade accounts payable	**$ 1,037**	$ 1,110
Accrued expenses and other current liabilities	**1,277**	978
Income taxes payable	**—**	2
Short-term borrowings and current maturities of long-term debt	**105**	95
Non-recourse debt, current maturities	**737**	—
Total current liabilities	**3,156**	2,185
Deferred income taxes and other long-term liabilities	**175**	300
Pension and postretirement obligations, net	**111**	111
Long-term debt, net of current maturities	**593**	690
Operating lease liabilities	**1,181**	—
Non-recourse debt	**—**	754
Total liabilities	**5,216**	4,040
Commitments and contingencies		
Stockholders' equity:		
Common stock — authorized 800,000,000 shares of $0.01 par value; issued shares — 620,394,831 at September 28, 2019 and 614,170,704 at December 29, 2018; outstanding shares — 546,484,255 at September 28, 2019 and 543,833,428 at December 29, 2018	**6**	6
Additional paid-in capital	**2,653**	2,677
Accumulated other comprehensive loss	**(92)**	(99)
Accumulated deficit	**(144)**	(173)
Treasury stock, at cost — 73,910,576 shares at September 28, 2019 and 70,337,276 shares at December 29, 2018	**(296)**	(285)
Total stockholders' equity	**2,127**	2,126
Total liabilities and stockholders' equity	**$ 7,343**	$ 6,166

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the 2018 Form 10-K.

OFFICE DEPOT, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In millions)
(Unaudited)

	39 Weeks Ended	
	September 28, 2019	September 29, 2018
Cash flows from operating activities of continuing operations:		
Net income	**$ 44**	$ 118
Income from discontinued operations, net of tax	**—**	5
Net income from continuing operations	**44**	113
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	**154**	142
Amortization of debt discount and issuance costs	**6**	7
Charges for losses on receivables and inventories	**22**	30
Asset impairments	**50**	—
Compensation expense for share-based payments	**25**	19
Deferred income taxes and deferred tax asset valuation allowances	**23**	44
Contingent consideration payments in excess of acquisition-date liability	**(11)**	—
Changes in working capital and other	**(99)**	200
Net cash provided by operating activities of continuing operations	**214**	555
Cash flows from investing activities of continuing operations:		
Capital expenditures	**(123)**	(121)
Businesses acquired, net of cash acquired	**(21)**	(64)
Other investing activities	**2**	4
Net cash used in investing activities of continuing operations	**(142)**	(181)
Cash flows from financing activities of continuing operations:		
Net payments on long and short-term borrowings	**(74)**	(74)
Cash dividends on common stock	**(41)**	(42)
Share purchases for taxes, net of proceeds from employee share-based transactions	**(9)**	(4)
Repurchase of common stock for treasury	**(11)**	(22)
Contingent consideration payments up to amount of acquisition-date liability	**(12)**	—
Acquisition of non-controlling interest	**—**	(18)
Other financing activities	**2**	1
Net cash used in financing activities of continuing operations	**(145)**	(159)
Cash flows from discontinued operations:		
Operating activities of discontinued operations	**—**	11
Investing activities of discontinued operations	**—**	66
Net cash provided by discontinued operations	**—**	77
Effect of exchange rate changes on cash and cash equivalents	**3**	(4)
Net increase (decrease) in cash and cash equivalents	**(70)**	288
Cash, cash equivalents and restricted cash at beginning of period	**660**	639
Cash, cash equivalents and restricted cash at end of period — continuing operations	**$ 590**	$ 927

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the 2018 Form 10-K.

OFFICE DEPOT, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In millions, except share and per share amounts)
(Unaudited)

	39 Weeks Ended September 28, 2019						
	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Treasury Stock	Total Equity
Balance at December 29, 2018	614,170,704	$ 6	$ 2,677	$ (99)	$ (173)	$ (285)	$ 2,126
Net income	—	—	—	—	8	—	8
Other comprehensive income	—	—	—	11	—	—	11
Exercise and release of incentive stock (including income tax benefits and withholding)	5,932,430	—	(7)	—	—	—	(7)
Amortization of long-term incentive stock grants	—	—	8	—	—	—	8
Dividends paid on common stock ($0.025 per share)	—	—	(14)	—	—	—	(14)
Repurchase of common stock	—	—	—	—	—	(11)	(11)
Adjustment for adoption of accounting standard	—	—	—	—	(15)	—	(15)
Balance at March 30, 2019	620,103,134	$ 6	$ 2,664	$ (88)	$ (180)	$ (296)	$ 2,106
Net loss	—	—	—	—	(24)	—	(24)
Other comprehensive income	—	—	—	5	—	—	5
Exercise and release of incentive stock (including income tax benefits and withholding)	155,939	—	(1)	—	—	—	(1)
Amortization of long-term incentive stock grants	—	—	9	—	—	—	9
Dividends paid on common stock ($0.025 per share)	—	—	(13)	—	—	—	(13)
Balance at June 29, 2019	620,259,073	$ 6	$ 2,659	$ (83)	$ (204)	$ (296)	$ 2,082
Net income	—	—	—	—	60	—	60
Other comprehensive loss	—	—	—	(9)	—	—	(9)
Exercise and release of incentive stock (including income tax benefits and withholding)	135,758	—	—	—	—	—	—
Amortization of long-term incentive stock grants	—	—	8	—	—	—	8
Dividends paid on common stock ($0.025 per share)	—	—	(14)	—	—	—	(14)
Balance at September 28, 2019	620,394,831	$ 6	$ 2,653	$ (92)	$ (144)	$ (296)	$ 2,127

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the 2018 Form 10-K.

OFFICE DEPOT, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In millions, except share and per share amounts)
(Unaudited) – (Continued)

	39 Weeks Ended September 29, 2018						
	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Treasury Stock	Total Equity
Balance at December 30, 2017	610,353,994	$ 6	$ 2,711	$ (78)	$ (273)	$ (246)	$ 2,120
Net income	—	—	—	—	41	—	41
Other comprehensive income	—	—	—	14	—	—	14
Exercise and release of incentive stock (including income tax benefits and withholding)	3,862,224	—	(3)	—	—	—	(3)
Amortization of long-term incentive stock grants	—	—	3	—	—	—	3
Dividends paid on common stock ($0.025 per share)	—	—	(14)	—	—	—	(14)
Adjustment for adoption of accounting standard	—	—	—	—	(4)	—	(4)
Balance at March 31, 2018	614,216,218	$ 6	$ 2,697	$ (64)	$ (236)	$ (246)	$ 2,157
Net income	—	—	—	—	16	—	16
Other comprehensive loss	—	—	—	(3)	—	—	(3)
Exercise and release of incentive stock (including income tax benefits and withholding)	198,549	—	—	—	—	—	—
Acquisition escrow shares returned	(248,200)	—	(1)	—	—	—	(1)
Amortization of long-term incentive stock grants	—	—	9	—	—	—	9
Dividends paid on common stock ($0.025 per share)	—	—	(14)	—	—	—	(14)
Repurchase of common stock	—	—	—	—	—	(8)	(8)
Balance at June 30, 2018	614,166,567	$ 6	$ 2,691	$ (67)	$ (220)	$ (254)	$ 2,156
Net income	—	—	—	—	60	—	60
Other comprehensive income	—	—	—	3	—	—	3
Exercise and release of incentive stock (including income tax benefits and withholding)	(37,660)	—	—	—	—	—	—
Amortization of long-term incentive stock grants	—	—	7	—	—	—	7
Dividends paid on common stock ($0.025 per share)	—	—	(14)	—	—	—	(14)
Repurchase of common stock	—	—	—	—	—	(14)	(14)
Other	—	—	—	(1)	—	—	(1)
Balance at September 29, 2018	614,128,907	$ 6	$ 2,684	$ (65)	$ (160)	$ (268)	$ 2,197

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the 2018 Form 10-K.

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF PRESENTATION

Office Depot, Inc. including its consolidated subsidiaries ("Office Depot" or the "Company"), is a leading provider of business services and supplies, products and technology solutions to small, medium and enterprise businesses, through a fully integrated business-to-business ("B2B") distribution platform of 1,317 retail stores, online presence, and dedicated sales professionals and technicians. Through its banner brands Office Depot®, OfficeMax®, CompuCom® and Grand&Toy®, as well as others, the Company offers its customers the tools and resources they need to focus on starting, growing and running their business. The Company's corporate headquarters is located in Boca Raton, FL, and its primary website is www.officedepot.com.

As of September 28, 2019, the Company had three reportable segments (or "Divisions"): Business Solutions Division, Retail Division and the CompuCom Division.

The Condensed Consolidated Financial Statements as of September 28, 2019, and for the 13-week and 39-week periods ended September 28, 2019 (also referred to as the "third quarter of 2019" and "year-to-date 2019," respectively) and September 29, 2018 (also referred to as the "third quarter of 2018" and "year-to-date 2018," respectively) are unaudited. However, in management's opinion, these Condensed Consolidated Financial Statements reflect all adjustments of a normal recurring nature necessary to provide a fair presentation of the Company's financial position, results of operations and cash flows for the periods presented. Business acquisitions in 2018 and 2019 are included prospectively from the date of acquisition, thus affecting the comparability of the Company's financial statements for all periods presented in this report on Form 10-Q.

The Company has prepared the Condensed Consolidated Financial Statements included herein pursuant to the rules and regulations of the U.S. Securities and Exchange Commission ("SEC"). Some information and note disclosures, which would normally be included in comprehensive annual financial statements prepared in accordance with accounting principles generally accepted in the United States ("GAAP"), have been condensed or omitted pursuant to those SEC rules and regulations. The preparation of these Condensed Consolidated Financial Statements requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. For a better understanding of the Company and its Condensed Consolidated Financial Statements, the Company recommends reading these Condensed Consolidated Financial Statements in conjunction with the audited financial statements, which are included in the Company's 2018 Form 10-K. These interim results are not necessarily indicative of the results that should be expected for the full year.

CASH MANAGEMENT

The cash management process generally utilizes zero balance accounts which provide for the settlement of the related disbursement and cash concentration accounts on a daily basis. As of September 28, 2019 and December 29, 2018, Trade accounts payable and Accrued expenses and other current liabilities, in the aggregate, included $16 million and $27 million, respectively, of amounts not yet presented for payment drawn in excess of disbursement account book balances, after considering offset provisions.

At September 28, 2019, cash and cash equivalents from continuing operations held outside the United States amounted to $161 million.

Restricted cash consists primarily of short-term cash deposits having original maturity dates of twelve months or less that serve as collateral to certain of the Company's letters of credit. Restricted cash is valued at cost, which approximates fair value. At September 28, 2019 and December 29, 2018, restricted cash amounted to $2 million and is included in Prepaid expenses and other current assets in the Condensed Consolidated Balance Sheets.

LEASING ARRANGEMENTS

The Company conducts a substantial portion of its business in leased properties. Some of the Company's leases contain escalation clauses and renewal options. The Company recognizes rental expense for operating leases that contain predetermined fixed escalation clauses on a straight-line basis over the expected term of the lease.

Prior to the adoption of the new lease accounting standard on the first day of fiscal 2019, the expected term of a lease was calculated from the date the Company first took possession of the facility, including any periods of free rent, and extended through the non-cancellable period and any option or renewal periods management believed were reasonably assured of being exercised. Rent abatements and escalations were considered in the calculation of minimum lease payments in the Company's lease classification assessment and in determining straight-line rent expense for operating leases. Straight-line rent expense was also adjusted to reflect

any allowances or reimbursements provided by the lessor. When required under lease agreements, estimated costs to return facilities to original condition were accrued over the lease period.

Subsequent to the adoption of the new lease accounting standard, the Company first determines whether an arrangement is a lease at inception. Once that determination is made, leasing arrangements are presented on the Condensed Consolidated Balance Sheet as follows:

- *Finance leases*:
  - Property and equipment, net – leases which were referred to as capital leases under the old accounting standard;
  - Short-term borrowings and current maturities of long-term debt – short-term obligations to make lease payments arising from the finance lease;
  - Long-term debt, net of current maturities – long-term obligations to make lease payments arising from the finance lease.
- *Operating leases*:
  - Operating lease right-of-use ("ROU") assets – the Company's right to use the underlying asset for the lease term;
  - Accrued expenses and other current liabilities – short-term obligations to make lease payments arising from the operating lease;
  - Operating lease liabilities – long-term obligations to make lease payments arising from the operating lease.

Operating lease ROU assets and liabilities are recognized at commencement date based on the present value of the future minimum lease payments over the lease term. As the rate implicit in the lease is not readily determinable for any of the leases, the Company has utilized its incremental borrowing rate based on the information available at commencement date in determining the present value of future payments. The Company uses the rate of interest that a lessee would have to pay to borrow on a collateralized basis over a similar term in an amount equal to the lease payments in a similar economic environment. The operating lease ROU asset also includes any lease payments made prior to commencement and excludes lease incentives and initial direct costs incurred. Certain leases include one or more options to renew, with renewal terms that can extend the lease from five to 25 years or more, which is generally at the Company's discretion. Any option or renewal periods management believed were reasonably certain of being exercised are included in the lease term. Operating lease expense for lease payments is recognized on a straight-line basis over the lease term.

The Company has lease agreements with lease and non-lease components, for which it has made an accounting policy election to account for these as a single lease component. Refer to the "New Accounting Standards" section below for more information including the impact on the Condensed Consolidated Financial Statements relating to the adoption of the new lease accounting standard.

CHANGE IN METHOD OF APPLYING AN ACCOUNTING PRINCIPLE

During the third quarter of 2019, the Company decided to change its annual goodwill impairment assessment date from the first day of the third quarter to the first day of fiscal month December. The change in measurement date represents a change in method of applying an accounting principle. This change is preferable because it aligns the Company's impairment testing procedures with its annual business planning and budgeting process, which occurs in the fourth quarter of each year, and with the timing of the development of its multi-year strategic plan. This change in accounting principle related to the annual testing date will not delay, accelerate or avoid an impairment charge. This change will not be applied retrospectively as it is impracticable to do so because retrospective application would require application of significant estimates and assumptions with the use of hindsight. Accordingly, the change will be applied prospectively. In addition, this change will not have a material impact on the Company's financial statements.

The Company also completed its annual goodwill impairment test during the quarter and concluded that the fair value of each reporting unit exceeded their respective carrying amount. Refer to Note 5 "Segment Information" for more information.

NEW ACCOUNTING STANDARDS

Standards that are not yet adopted:

- *Financial Instruments – Credit Losses*: In June 2016, the Financial Accounting Standards Board ("FASB") issued an accounting standards update that modifies the measurement of expected credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. The update will change the accounting for credit impairment by adding an impairment model that is based on expected losses rather than incurred losses. In July 2018, the FASB approved an amendment to the new guidance that provides transition relief to the adopting entities and allows for an election of the fair value option on certain financial instruments. This accounting standards update, as amended, is effective

for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years, with early adoption permitted for fiscal years beginning after December 15, 2018. The Company is evaluating the impact of this new standard but believes the adoption will not have a material impact on its Condensed Consolidated Financial Statements.

- *Cloud computing arrangements*: In August 2018, the FASB issued an accounting standards update that provides guidance regarding the accounting for implementation costs in cloud computing arrangements. This accounting update is effective for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years, with early adoption permitted. The Company is evaluating the impact of this new standard but believes the adoption will not have a material impact on its Condensed Consolidated Financial Statements.

- *Fair value measurements*: In August 2018, the FASB issued an accounting standards update that adds, removes, and modifies the disclosure requirements related to fair value measurements. This accounting update is effective for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years, with early adoption permitted. The Company is evaluating the impact of this new standard but believes the adoption will not have a material impact on its Condensed Consolidated Financial Statements.

- *Defined benefit plan*: In August 2018, the FASB issued an accounting standards update that modifies the disclosure requirements for employers that sponsor defined benefit pension or other postretirement plans. This accounting update is effective for fiscal years beginning after December 15, 2020 and interim periods within those fiscal years, with early adoption permitted. The Company is evaluating the impact of this new standard but believes the adoption will not have a material impact on its Condensed Consolidated Financial Statements.

Standards that were adopted:

- *Leases*: In February 2016, the FASB issued an accounting standards update that requires lessees to recognize most leases on their balance sheets related to the rights and obligations created by those leases. The accounting treatment for finance leases and lessors remains relatively unchanged. The accounting standards update also requires additional qualitative and quantitative disclosures related to the nature, timing and uncertainty of cash flows arising from leases. The initial standard required a modified retrospective transition approach, with application, including disclosures, in all comparative periods presented. In July 2018, the FASB approved an amendment to the new guidance that introduced an alternative modified retrospective transition approach granting companies the option of using the effective date of the new standard as the date of initial application. The Company adopted the standard on the first day of the first quarter of 2019 using this alternative transition approach.

  The Company elected the transition package of practical expedients that is permitted by the standard. The package of practical expedients allows the Company to not reassess previous accounting conclusions regarding whether existing arrangements are or contain leases, the classification of existing leases, and the treatment of initial direct costs. The Company did not elect the hindsight transition practical expedient allowed for by the new standard, which allows entities to use hindsight when determining lease term and impairment of operating lease ROU assets. Additionally, the Company elected certain other practical expedients offered by the new standard which it will apply to all asset classes, including the option not to separate lease and non-lease components and instead to account for them as a single lease component and the option not to recognize ROU assets and related liabilities that arise from short-term leases (i.e., leases with terms of twelve months or less that do not include an option to purchase the underlying asset that the Company is reasonably certain to exercise).

  Substantially all of the Company's retail store locations, supply chain facilities, certain corporate facilities and copy print equipment are subject to operating lease arrangements. As a result, the standard had material impacts on the Condensed Consolidated Balance Sheet, but did not have an impact on the Condensed Consolidated Statement of Operations and Condensed Consolidated Statement of Cash Flows. The most significant impacts of the standard on the Condensed Consolidated Balance Sheet on the date of adoption were as follows:

  - Recognition of $1.4 billion Operating lease right-of-use assets and $1.6 billion Operating lease liabilities;
  - Derecognition of approximately $41 million of Property and equipment, net and $39 million of financing obligations associated with non-owned properties that were capitalized under previously existing build-to-suit lease accounting rules;
  - Cumulative effect of $15 million adoption date adjustments to Accumulated deficit comprised of a $20 million impairment charge, net of tax effect, to the operating lease ROU assets, primarily because the fair market value of certain retail stores was lower than their carrying value prior to the adoption date; $4 million deferred gain, net of tax effect, related to transactions accounted for as sales and operating leasebacks under the previous lease accounting standard; and a $1 million credit, net of tax effect, arising from the derecognition of assets and liabilities

associated with non-owned properties that were capitalized under previously existing build-to-suit lease accounting rules.

As part of its adoption of the new lease accounting standard, the Company also implemented new internal controls and updated accounting policies and procedures, operational processes and documentation practices to enable the preparation of financial information on adoption. Refer to Note 8 for additional disclosures required as a result of the adoption of this new standard.

- *Goodwill*: In January 2017, the FASB issued an accounting standards update that simplifies how entities assess goodwill for impairment. The revised guidance eliminates the requirement to perform a hypothetical purchase price allocation to measure goodwill impairment. Under this accounting update, a goodwill impairment loss should instead be measured at the amount by which the carrying amount of a reporting unit exceeds its fair value, not to exceed the carrying amount of goodwill. This accounting standards update is effective for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years, with early adoption permitted. The Company early adopted this accounting standards update with no material impact to its Condensed Consolidated Financial Statements.

NOTE 2. ACQUISITIONS

Since 2017, the Company has been undergoing a strategic business transformation to pivot into an integrated B2B distribution platform, with the objective of expanding its product offerings to include value-added services for its customers and capture greater market share. As part of this transformation, the Company has been acquiring businesses, including four small independent regional office supply distribution businesses during year-to-date 2019. These acquisitions continue to expand the Company's reach and distribution network into geographic areas that were previously underserved. Of these four acquisitions, two were completed in the first quarter of 2019, and two were completed in the second quarter of 2019.

The aggregate total purchase consideration, including contingent consideration, for the four acquisitions completed in year-to-date 2019 was approximately $25 million, subject to certain customary post-closing adjustments. The aggregate purchase price was primarily funded with cash on hand. The acquisitions were treated as purchases in accordance with ASC 805, Business Combinations ("ASC 805") which requires allocation of the purchase price to the estimated fair values of assets and liabilities acquired in the transaction including goodwill and other intangible assets. The Company has performed a preliminary purchase price allocation of the aggregate purchase price to the estimated fair values of assets and liabilities acquired in the transactions, including $1 million of customer relationship intangible assets, $4 million of trade name intangible assets and $20 million of goodwill. An immaterial amount of the aggregate purchase price was allocated to working capital accounts. These assets and liabilities are included in the Condensed Consolidated Balance Sheet as of September 28, 2019. As additional information is obtained about these assets and liabilities within the measurement period (not to exceed one year from the dates of acquisition), the Company will refine its estimates of fair value to allocate the purchase price. The operating results of the acquired office supply distribution businesses are combined with the Company's operating results subsequent to their purchase dates, and are included in the Business Solutions Division. Certain disclosures set forth under ASC 805, including supplemental pro forma financial information, are not disclosed because the operating results of the acquired businesses, individually and in the aggregate, are not material to the Company.

During 2018, the Company recognized a contingent consideration liability of $25 million in connection with the acquisition of an enterprise IT solutions integrator and managed services provider. In the first quarter of 2019, the Company paid $23 million of this contingent consideration liability, of which $12 million was treated as a financing cash outflow on the Condensed Consolidated Statement of Cash Flows because it related to the acquisition-date accrual, and $11 million was presented as a cash outflow from operating activities as it was accrued subsequent to the acquisition date based on new information obtained on the financial performance of the acquired entity. The remaining $2 million of this contingent consideration liability will be paid during the fourth quarter of 2019 and will be treated as a cash outflow from operating activities.

Based on new information received, the preliminary purchase price allocations of the companies acquired in 2018 and 2019 have been adjusted during the respective measurement periods. These adjustments were insignificant individually and in the aggregate to the Company's Condensed Consolidated Financial Statements. The measurement periods for acquisitions completed in year-to-date 2018 closed within year-to-date 2019. Under the guidance on accounting for business combinations, merger and integration costs are not included as components of consideration transferred, instead, they are accounted for as expenses in the period in which the costs are incurred. Transaction-related expenses are included in the Merger and restructuring expenses, net line in the Condensed Consolidated Statements of Operations. Refer to Note 3 for additional information about the merger and restructuring expenses incurred during the third quarter and year-to-date 2019.

NOTE 3. MERGER AND RESTRUCTURING ACTIVITY

Since 2017, the Company has taken actions to optimize its asset base and drive operational efficiencies. These actions include acquiring profitable businesses, closing underperforming retail stores and non-strategic distribution facilities, consolidating functional activities, eliminating redundant positions and disposing of non-strategic businesses and assets. The expenses and any income recognized directly associated with these actions are included in Merger and restructuring expenses, net on a separate line in the Condensed Consolidated Statements of Operations in order to identify these activities apart from the expenses incurred to sell to and service its customers. These expenses are not included in the determination of Division operating income. The table below summarizes the major components of Merger and restructuring expenses, net.

	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Merger and transaction related expenses, net				
Severance and retention	**$ —**	$ 4	**$ 1**	$ 9
Transaction and integration	**6**	5	**18**	16
Facility closure, contract termination, and other expenses, net	**—**	2	**—**	10
Total Merger and transaction related expenses, net	**6**	11	**19**	35
Restructuring expenses				
Severance	**—**	—	**40**	—
Professional fees	**12**	3	**31**	9
Facility closure, contract termination, and other expenses, net	**4**	—	**15**	1
Total Restructuring expenses	**16**	3	**86**	10
Total Merger and restructuring expenses, net	**$ 22**	$ 14	**$ 105**	$ 45

- *Merger and transaction related expenses, net*: Severance and retention include expenses related to the integration of staff functions in connection with business acquisitions and are expensed through the severance and retention period. Transaction and integration include legal, accounting, and other third-party expenses incurred in connection with acquisitions and business integration activities primarily related to CompuCom. Facility closure, contract termination, and other expenses, net relate to facility closure accruals, contract termination costs, gains and losses on asset dispositions, and accelerated depreciation. Also included in the merger and transaction related expenses, net are $5 million of integration expenses associated with the OfficeMax merger, all of which were incurred in the first half of 2018, and $2 million and $5 million of facility closure costs in the third quarter and year-to-date 2018, respectively. All integration activities associated with the OfficeMax merger were completed in 2018.

- *Restructuring expenses*: In May 2019, the Company's Board of Directors approved a company-wide, multi-year, cost reduction and business improvement program to systematically drive down costs, improve operational efficiencies, and enable future growth investments. Under this program (the "Business Acceleration Program"), the Company has made and will continue to make organizational realignments stemming from process improvements, increased leverage of technology and accelerated use of automation. This has resulted and will continue to result in the elimination of certain positions and a flatter organization. In connection with the Business Acceleration Program, the Company also anticipates closing approximately 90 underperforming retail stores in 2020 and 2021, and 9 other facilities, consisting of distribution centers and sales offices, of which 7 were closed as of the end of the third quarter of 2019. Total estimated costs to implement the Business Acceleration Program are expected to be approximately $122 million, comprised of:
  (a) severance and related employee costs of approximately $40 million
  (b) recruitment and relocation costs of approximately $2 million
  (c) retail store and facility closure costs of approximately $26 million
  (d) third-party costs to facilitate the execution of the Business Acceleration Program of approximately $46 million
  (e) other costs of approximately $8 million

  Of the aggregate costs to implement the Business Acceleration Program, approximately $110 million are expected to be cash expenditures through 2021 funded primarily with cash on hand and cash from operations. In fiscal 2019, the Company expects to incur approximately $85 million, of which approximately $70 million will be cash, for severance and related employee costs, recruitment and relocation, and third-party costs including legal and consulting fees under the Business Acceleration Program. Of the $70 million cash expenditures expected in 2019, approximately $59 million has been paid through the end of the third quarter of 2019.

  In the third quarter of 2019, the Company incurred $16 million in restructuring expenses associated with the Business Acceleration Program which consisted of $1 million of retail store and facility closure costs, $12 million in professional fees, and $3 million of other costs. Included in restructuring expenses in year-to-date 2019 are $40 million of severance costs, $4

million of retail store and facility closure costs, $31 million in third-party professional fees, and $4 million of other costs incurred in connection with the Business Acceleration Program.

Also included in restructuring expenses in the third quarter and year-to-date 2019 and 2018 are costs incurred in connection with the Comprehensive Business Review, a program the Company announced in 2016. These costs include severance, facility closure costs, contract termination, accelerated depreciation, relocation and disposal gains and losses, as well as other costs associated with retail store closures. In the third quarter and year-to-date 2019, the Company closed 3 and 44 retail stores, respectively, and expects to close approximately 10 additional stores through the end of the Comprehensive Business Review program in 2019.

Additionally, restructuring expenses in the third quarter and year-to-date 2018 also reflect professional fee expenses incurred in connection with the Company's multi-year strategic transformation which began in 2017. All activities associated with the multi-year strategic transformation plan were completed in 2018.

MERGER AND RESTRUCTURING ACCRUALS

The activity in the merger and restructuring accruals in year-to-date 2019 is presented in the table below. Certain merger and restructuring charges are excluded from the table because they are paid as incurred or non-cash, such as accelerated depreciation and gains and losses on asset dispositions.

(In millions)	Balance as of December 29, 2018	Charges Incurred	Cash Payments	Adjustments (a)	Balance as of September 28, 2019
Termination benefits:					
Merger-related accruals	$ 3	$ 1	$ (3)	$ —	**$ 1**
Comprehensive Business Review	—	—	—	—	**—**
Business Acceleration Program	—	41	(25)	—	**16**
Lease and contract obligations, accruals for facilities closures and other costs:					
Merger-related accruals	10	—	—	(10)	**—**
Comprehensive Business Review	5	5	(4)	(3)	**3**
Business Acceleration Program	—	34	(29)	—	**5**
Total	$ 18	$ 81	$ (61)	$ (13)	**$ 25**

(a) Represents reclassification of operating lease obligations associated with facility closures to Operating lease ROU assets on the Condensed Consolidated Balance Sheet in accordance with the new lease accounting standard.

The short-term and long-term components of these liabilities are included in Accrued expenses and other current liabilities and Deferred income taxes and other long-term liabilities, respectively, in the Condensed Consolidated Balance Sheets.

NOTE 4. REVENUE RECOGNITION

PRODUCTS AND SERVICES REVENUE

The following table provides information about disaggregated revenue by Division, and major products and services categories.

	Third Quarter of 2019				
(In millions)	Business Solutions Division	Retail Division	CompuCom Division	Other	Total
Major products and services categories					
Products					
Supplies	$ 758	$ 495	$ —	$ 4	$ 1,257
Technology	302	422	71	—	795
Furniture and other	204	119	—	2	325
Services					
Technology	—	7	176	(3)	180
Copy, print, and other	86	134	5	—	225
Total	$ 1,350	$ 1,177	$ 252	$ 3	$ 2,782

	Third Quarter of 2018				
(In millions)	Business Solutions Division	Retail Division	CompuCom Division	Other	Total
Major products and services categories					
Products					
Supplies	$ 760	$ 516	$ —	$ 3	$ 1,279
Technology	323	493	51	(3)	864
Furniture and other	195	113	—	2	310
Services					
Technology	1	8	212	(1)	220
Copy, print, and other	85	124	5	—	214
Total	$ 1,364	$ 1,254	$ 268	$ 1	$ 2,887

	Year-to-Date 2019				
(In millions)	Business Solutions Division	Retail Division	CompuCom Division	Other	Total
Major products and services categories					
Products					
Supplies	$ 2,264	$ 1,302	$ —	$ 10	$ 3,576
Technology	941	1,294	209	1	2,445
Furniture and other	576	320	—	4	900
Services					
Technology	—	21	539	(9)	551
Copy, print, and other	241	415	10	1	667
Total	$ 4,022	$ 3,352	$ 758	$ 7	$ 8,139

	Year-to-Date 2018				
(In millions)	Business Solutions Division	Retail Division	CompuCom Division	Other	Total
Major products and services categories					
Products					
Supplies	$ 2,212	$ 1,358	$ —	$ 7	$ 3,577
Technology	1,004	1,481	154	(8)	2,631
Furniture and other	546	314	—	4	864
Services					
Technology	1	24	641	(2)	664
Copy, print, and other	227	374	8	—	609
Total	$ 3,990	$ 3,551	$ 803	$ 1	$ 8,345

- *Products revenue* includes the sale of:
    - Supplies such as paper, writing instruments, office supplies, cleaning and breakroom items
    - Technology related products such as toner and ink, printers, computers, tablets and accessories, and electronic storage
    - Furniture and other products such as desks, seating, and luggage

  The Company sells its supplies, furniture and other products through its Business Solutions and Retail Divisions, and its technology products through all three Divisions. Customers can purchase products through the Company's call centers, electronically through its Internet websites, or through its retail stores. Revenues from supplies, technology, and furniture and other product sales are recognized when the customer obtains control of the Company's product, which occurs at a point in time, typically upon delivery to the customer.

  Furniture and other products also include arrangements where customers can make special furniture interior design and installation orders that are customized to their needs. The performance obligations related to these arrangements are satisfied over time.

- *Services revenue* includes the sale of:
    - Technology service offerings provided through the Company's CompuCom Division, such as end user computing support, managed information technology ("IT") services, data center monitoring and management, service desk, network infrastructure, IT workforce solutions, mobile device management, IT integration solutions and cloud services, as well as technology support services offerings provided in the Company's retail stores, such as installation and repair
    - Copy, print, and other service offerings such as managed print and fulfillment services, product subscriptions, and sales of third party software, gift cards, warranties, remote support as well as rental income on operating lease arrangements where the Company conveys to its customers the right to use devices and other equipment for a stated period

  The largest offering in the technology service category is end user computing, which provides on-site services to assist corporate end users with their information technology needs. Services are either billed on a rate per hour or per user, or on a fixed monthly retainer basis. For the majority of technology service offerings contracts, the Company has the right to invoice the customer in an amount that directly corresponds with the value to the customer of the Company's performance to date and as such the Company recognizes revenue based on the amount billable to the customer in accordance with the practical expedient provided by the current revenue guidance.

  Substantially all of the Company's other service offerings are satisfied at a point in time and revenue is recognized as such. The largest other service offering is copy and print services, which includes printing, copying, and digital imaging. The majority of copy and print services are fulfilled through retail stores and the related performance obligations are satisfied within a short period of time (generally within the same day).

REVENUE RECOGNITION AND SIGNIFICANT JUDGMENTS

Revenue is recognized upon transfer of control of promised products or services to customers in an amount that reflects the consideration the Company is entitled to receive in exchange for those products or services. For product sales, transfer of control occurs at a point in time, typically upon delivery to the customer. For service offerings, the transfer of control and satisfaction of the performance obligation is either over time or at a point in time. When performance obligations are satisfied over time, the Company evaluates the pattern of delivery and progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition. Revenue is recognized net of allowance for returns and net of any taxes collected from customers, which are subsequently remitted to governmental authorities. Shipping and handling costs are considered fulfillment activities and are recognized within the Company's cost of goods sold.

Contracts with customers could include promises to transfer multiple products and services to a customer. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. Determining the standalone selling price also requires judgment. The Company did not have significant revenues generated from such contracts during the third quarter and year-to-date 2019.

Products are generally sold with a right of return and the Company may provide other incentives, such as rebates and coupons, which are accounted for as variable consideration when estimating the amount of revenue to recognize. The Company estimates returns and incentives at contract inception and includes the amount in the transaction price for which significant reversal is not probable. These estimates are updated at the end of each reporting period as additional information becomes available.

The Company offers a customer loyalty program that provides customers with rewards that can be applied to future purchases or other incentives. Loyalty rewards are accounted for as a separate performance obligation and a deferred liability is recorded in the amount of the transaction price allocated to the rewards, inclusive of the impact of estimated breakage. The estimated breakage of loyalty rewards is based on historical redemption rates experienced under the loyalty program. Revenue is recognized when the loyalty rewards are redeemed or expire. As of September 28, 2019, the Company had $12 million of deferred liability related to the loyalty program, which is included in Accrued expenses and other current liabilities in the Condensed Consolidated Balance Sheets.

The Company recognizes revenue in certain circumstances before product delivery occurs (commonly referred to as bill-and-hold transactions). Revenue from bill-and-hold transactions is recognized when all specific requirements for transfer of control under a bill-and-hold arrangement have been met which include, among other things, a request from the customer that the product be held for future scheduled delivery. For these bill-and-hold arrangements, the associated product inventory is identified separately as belonging to the customer and is ready for physical transfer.

CONTRACT BALANCES

The timing of revenue recognition may differ from the timing of invoicing to customers. A receivable is recognized in the period the Company delivers goods or provides services, and is recorded at the invoiced amount, net of an allowance for doubtful accounts. A receivable is also recognized for unbilled services where the Company's right to consideration is unconditional, and is recorded based on an estimate of time and materials. Payment terms and conditions vary by contract type, although terms generally include a requirement of payment within 20 to 60 days. In instances where the timing of revenue recognition differs from the timing of invoicing, the Company has determined that the contracts do not include a significant financing component. The primary purpose of the Company's invoicing terms is to provide customers with simplified and predictable ways of purchasing its products and services.

The Company receives payments from customers based upon contractual billing schedules. Contract assets include amounts related to deferred contract acquisition costs (refer to the section "Costs to Obtain a Contract" below) and if applicable, the Company's conditional right to consideration for completed performance under a contract. The short- and long-term components of contract assets in the table below are included in Prepaid expenses and other current assets, and Other assets, respectively, in the Condensed Consolidated Balance Sheets. Contract liabilities include payments received in advance of performance under the contract, and are recognized as revenue when the performance obligation is completed under the contract, as well as accrued contract acquisition costs, liabilities related to the Company's loyalty program and gift cards. The short and long-term components of contract liabilities in the table below are included in Accrued expenses and other current liabilities, and Deferred income taxes and other long-term liabilities, respectively, in the Condensed Consolidated Balance Sheets.

The following table provides information about receivables, contract assets and contract liabilities from contracts with customers:

(In millions)	September 28, 2019	December 29, 2018
Trade receivables, net	$ 665	$ 655
Short-term contract assets	25	22
Long-term contract assets	15	17
Short-term contract liabilities	50	52
Long-term contract liabilities	1	1

During the third quarter and year-to-date 2019, the Company did not have any contract assets related to conditional rights. The Company recognized revenues of $25 million during year-to-date 2019 which were included in the short-term contract liability balance at the beginning of the period. There were no contract assets and liabilities that were recognized during the third quarter and year-to-date 2019 as a result of business combinations. There were no significant adjustments to revenue from performance obligations satisfied in previous periods and there were no contract assets recognized at the beginning of the period that transferred to receivables during the third quarter and year-to-date 2019.

A majority of the purchase orders and statements of work related to contracts with customers require delivery of the product or service within one year or less. For certain service contracts that exceed one year, the Company recognizes revenue at the amount to which it has the right to invoice for services performed. Accordingly, the Company has applied the optional exemption provided by the new revenue recognition standard relating to unsatisfied performance obligations and does not disclose the value of unsatisfied performance obligations for its contracts.

COSTS TO OBTAIN A CONTRACT

The Company recognizes an asset for the incremental costs of obtaining a contract with a customer if it expects the benefit of those costs to be longer than one year. The Company has determined that certain rebate incentive programs meet the requirements to be

capitalized. These costs are periodically reviewed for impairment, and are amortized on a straight-line basis over the expected period of benefit. As of September 28, 2019, capitalized acquisition costs amounted to $40 million, which is reflected in short-term contract assets and long-term contract assets in the table above. During the third quarter and year-to-date 2019, amortization expense was $9 million and $26 million, respectively, and there was no impairment loss in relation to costs capitalized. The Company had no asset impairment charges related to contract assets in the periods presented herein.

NOTE 5. SEGMENT INFORMATION

At September 28, 2019, the Company had three reportable segments: Business Solutions Division, Retail Division and the CompuCom Division. The Business Solutions Division sells nationally branded as well as the Company's private branded office supply and adjacency products and services to customers in the United States, Puerto Rico, the U.S. Virgin Islands, and Canada. Business Solutions Division customers are served through dedicated sales forces, catalogs, telesales, and electronically through the Company's Internet websites. The Retail Division includes retail stores in the United States, Puerto Rico and the U.S. Virgin Islands, which offer office supplies, technology products and solutions, business machines and related supplies, print, cleaning, breakroom and facilities products, and office furniture as well as business services including copying, printing, mailing, shipping and technology support services. In addition, the print needs for retail and business customers are also facilitated through the Company's regional print production centers. The CompuCom Division provides IT services and products to enterprise organizations in the United States and Canada, and offers a broad range of solutions including end user computing support, managed IT services, data center monitoring and management, service desk, network infrastructure, IT workforce solutions, mobile device management, IT integration solutions and cloud services.

The retained global sourcing operations previously included in the former International Division are not significant and have been presented as Other. Also included in Other is the elimination of intersegment revenues of $3 million and $9 million for the third quarter and year-to-date 2019, respectively, and $4 million and $10 million for the third quarter and year-to-date 2018, respectively.

The products and services offered by the Business Solutions Division and the Retail Division are similar, but the CompuCom Division's offerings are focused on IT services and related products. The Company's three operating segments are its three reportable segments. The Business Solutions Division, the Retail Division and the CompuCom Division are managed separately as they represent separate channels in the way the Company serves its customers, and they are managed accordingly. The accounting policies for each segment are the same as those described in Note 1. Division operating income is determined based on the measure of performance reported internally to manage the business and for resource allocation. This measure charges to the respective Divisions those expenses considered directly or closely related to their operations and allocates support costs. Certain operating expenses and credits are not allocated to the Business Solutions Division, the Retail Division or the CompuCom Division, including asset impairments and merger and restructuring expenses, as well as expenses and credits retained at the Corporate level, including certain management costs and legacy pension and environmental matters. Other companies may charge more or less of these items to their segments and results may not be comparable to similarly titled measures used by other entities. In addition, the Company regularly evaluates the appropriateness of the reportable segments based on how the business is managed, including decision-making about resources allocation and assessing performance of the segments, particularly in light of organizational changes, merger and acquisition activity and changing laws and regulations. Therefore, the current reportable segments may change in the future.

The following is a summary of sales and operating income (loss) by each of the Divisions and Other, reconciled to consolidated totals.

	Sales			
	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Business Solutions Division	**$ 1,350**	$ 1,364	**$ 4,022**	$ 3,990
Retail Division	**1,177**	1,254	**3,352**	3,551
CompuCom Division	**252**	268	**758**	803
Other	**3**	1	**7**	1
Total	**$ 2,782**	$ 2,887	**$ 8,139**	$ 8,345

	Division Operating Income (Loss)			
	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Business Solutions Division	**$ 71**	$ 67	**$ 203**	$ 189
Retail Division	**84**	70	**160**	165
CompuCom Division	**3**	1	**(11)**	12
Other	**—**	—	**—**	(1)
Total	**$ 158**	$ 138	**$ 352**	$ 365

A reconciliation of the measure of Division operating income to Consolidated income from continuing operations before income taxes is as follows:

	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Total Divisions operating income	**$ 158**	$ 138	**$ 352**	$ 365
Add/(subtract):				
Asset impairments	**(5)**	—	**(50)**	—
Merger and restructuring expenses, net	**(22)**	(14)	**(105)**	(45)
Unallocated expenses	**(23)**	(19)	**(80)**	(90)
Interest income	**5**	7	**16**	18
Interest expense	**(22)**	(31)	**(68)**	(91)
Other income, net	**2**	4	**7**	11
Income from continuing operations before income taxes	**$ 93**	$ 85	**$ 72**	$ 168

The components of goodwill by segment are provided in the following table:

(In millions)	Business Solutions Division	Retail Division	CompuCom Division	Total
Balance as of December 29, 2018	$ 387	$ 78	$ 449	$ 914
Acquisitions	20	—	—	20
Foreign currency rate impact	—	—	4	4
Balance as of September 28, 2019	**$ 407**	**$ 78**	**$ 453**	**$ 938**

Refer to Note 2 for additional information on the acquisitions made during year-to-date 2019.

During the third quarter of 2019, the Company performed its annual goodwill impairment test using a quantitative assessment that combined the income approach and the market approach valuation methodologies, and concluded that the fair value of each reporting unit exceeded their respective carrying amount as of the assessment date, which was the first day of the quarter. The Company also did not identify any impairment related to its indefinite-lived intangible assets that were tested quantitatively as of the assessment date. The Company continues to monitor the performance of its Contract reporting unit, a component of the Business Solutions Division segment, and its CompuCom reporting unit, which both passed the quantitative assessment with margins in excess of those determined in the Company's 2018 annual assessment. The CompuCom Division reported an operating loss for year-to-date 2019 that was mainly driven by temporary shortfalls in revenue and profitability in the first quarter of 2019, and has improved its operational performance during the second and third quarters. The Company continues to undertake several actions to improve the future operating performance of CompuCom, including the use of automation and technology to further improve service efficiency, simplifying organizational structures to improve service velocity, and aligning sales efforts to better serve its customers and accelerate cross-selling opportunities. The anticipated impacts of these actions are reflected in key assumptions used in the quantitative assessment, and if not realized, could result in future impairment of goodwill and indefinite-lived intangible assets for the CompuCom reporting unit.

NOTE 6. INCOME TAXES

The Company's effective rates for the third quarter and year-to-date 2019 differ from the statutory rate of 21% enacted as part of the Tax Cuts and Jobs Act primarily due to the impact of state taxes and certain nondeductible items, adjustments to certain tax benefits and the mix of income and losses across U.S. and non-U.S. jurisdictions. The Company's effective tax rates in prior periods have varied considerably as a result of several primary factors including the mix of income and losses across U.S. and non-U.S. jurisdictions, the impact of excess tax deficiencies associated with stock-based compensation awards and the derecognition of valuation allowances against deferred tax assets that were not more-likely-than-not realizable in the U.S. and certain non-U.S. jurisdictions. During 2019 and 2018, the mix of income and losses across jurisdictions, although still applicable, has become less of a factor in influencing the Company's effective tax rates due to the dispositions of the international businesses and improved operating results. As a result, the Company's effective tax rates are 35% for the third quarter and 39% for year-to-date 2019, and 29% for the third quarter and 33% for year-to-date 2018. Changes in pretax income projections and the mix of income across jurisdictions could impact the effective tax rate in future quarters.

The Tax Cuts and Jobs Act repealed the corporate Alternative Minimum Tax ("AMT") and allows unutilized AMT credits to be refunded. For tax years 2018 through 2020, taxpayers may receive 50% of their uncredited balances as a cash refund with any remaining amounts refunded in full in 2021. The Company determined it is more-likely-than-not that $45 million of its AMT credits will be refunded and is expected to be received in the fourth quarter of 2019. Accordingly, the Company reclassified $45 million from non-current deferred tax assets to income tax receivables in the first quarter of 2019. The Company has not made a determination of the amount, if any, that may become a receivable in 2020 related to 2019 operations versus be utilized to offset any Federal tax liability.

During the third quarter of 2019, the Company entered into an agreement replacing existing debt collateralized by the Timber notes receivable with a term loan. The Company has previously recorded a deferred tax liability related to the taxes deferred from the original transaction. The deferred liability will be realized no later than the first quarter of 2020. It is anticipated that certain capital loss carryforwards, available tax credits and net operating losses will offset the resulting gain and no material cash income taxes will be due upon the realization.

The Company continues to have a U.S. valuation allowance for certain U.S. federal credits and state tax attributes, which relate to deferred tax assets that require certain types of income or for income to be earned in certain jurisdictions in order to be realized. The Company will continue to assess the realizability of its deferred tax assets in the U.S. and remaining foreign jurisdictions in future periods. Changes in pretax income projections could impact this evaluation in future periods.

The Company files a U.S. federal income tax return and other income tax returns in various states and foreign jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal and state and local income tax examinations for years prior to 2017 and 2013, respectively. The acquired OfficeMax U.S. consolidated group is no longer subject to U.S. federal income tax examination, and with few exceptions, is no longer subject to U.S. state and local income tax examinations for years prior to 2013. The Company's U.S. federal income tax return for 2017 is currently under review. Generally, the Company is subject to routine examination for years 2012 and forward in its international tax jurisdictions.

It is not reasonably possible that certain tax positions will be resolved within the next 12 months. Additionally, the Company anticipates that it is reasonably possible that new issues will be raised or resolved by tax authorities that may require changes to the balance of unrecognized tax benefits; however, an estimate of such changes cannot be reasonably made.

NOTE 7. EARNINGS PER SHARE

The following table represents the calculation of net earnings per common share – basic and diluted:

	Third Quarter		Year-to-Date	
(In millions, except per share amounts)	**2019**	2018	**2019**	2018
Basic Earnings Per Share				
Numerator:				
Net income from continuing operations	**$ 60**	$ 60	**$ 44**	$ 113
Income from discontinued operations, net of tax	**—**	—	**—**	5
Net income	**$ 60**	$ 60	**$ 44**	$ 118
Denominator:				
Weighted-average shares outstanding	**546**	551	**545**	555
Basic earnings per share:				
Continuing operations	**$ 0.11**	$ 0.11	**$ 0.08**	$ 0.20
Discontinued operations	**—**	—	**—**	0.01
Net earnings per share	**$ 0.11**	$ 0.11	**$ 0.08**	$ 0.21
Diluted Earnings Per Share				
Numerator:				
Net income from continuing operations	**$ 60**	$ 60	**$ 44**	$ 113
Income from discontinued operations, net of tax	**—**	—	**—**	5
Net income	**$ 60**	$ 60	**$ 44**	$ 118
Denominator:				
Weighted-average shares outstanding	**546**	551	**545**	555
Effect of dilutive securities:				
Stock options and restricted stock	**3**	13	**8**	9
Diluted weighted-average shares outstanding	**549**	564	**553**	564
Diluted earnings per share:				
Continuing operations	**$ 0.11**	$ 0.11	**$ 0.08**	$ 0.20
Discontinued operations	**—**	—	**—**	0.01
Net diluted earnings per share	**$ 0.11**	$ 0.11	**$ 0.08**	$ 0.21

Awards of stock options and nonvested shares representing approximately 13 million and 8 million additional shares of common stock were outstanding for the third quarter and year-to-date 2019, respectively, and approximately 6 million and 7 million for the third quarter and year-to-date 2018, but were not included in the computation of diluted weighted-average shares outstanding because their effect would have been antidilutive.

NOTE 8. LEASES

The Company leases retail stores and other facilities, vehicles, and equipment under operating lease agreements. Facility leases typically are for a fixed non-cancellable term with one or more renewal options. In addition to rent payments, the Company is required to pay certain variable lease costs such as real estate taxes, insurance and common-area maintenance on most of the facility leases. For leases beginning in 2019, the Company accounts for lease components (e.g., fixed payments including rent) and non-lease components (e.g., real estate taxes, insurance costs and common-area maintenance costs) as a single lease component. Many lease agreements contain tenant improvement allowances, rent holidays, and/or rent escalation clauses. Certain leases contain provisions for additional rent to be paid if sales exceed a specified amount, though such payments have been immaterial during the periods presented. The Company subleases certain real estate to third parties, consisting mainly of operating leases for space within the retail stores.

The components of lease expense were as follows:

(In millions)	Third Quarter 2019	Year-to-Date 2019
Finance lease cost:		
Amortization of right-of-use assets	$ 5	$ 13
Interest on lease liabilities	2	4
Operating lease cost	107	327
Short-term lease cost	2	5
Variable lease cost	27	92
Sublease income	(1)	(2)
Total lease cost	$ 142	$ 439

Supplemental cash flow information related to leases was as follows:

(In millions)	Year-to-Date 2019
Cash paid for amounts included in the measurement of lease liabilities	
Operating cash flows from finance leases	$ 4
Operating cash flows from operating leases	366
Financing cash flows from finance leases	16
Right-of-use assets obtained in exchange for new finance lease liabilities	21
Right-of-use assets obtained in exchange for new operating lease liabilities	211

Supplemental balance sheet information related to leases was as follows:

(In millions, except lease term and discount rate)	September 28, 2019
Property and equipment, net	$ 51
Operating lease right-of-use assets	1,374
Accrued expenses and other current liabilities	368
Short-term borrowings and current maturities of long-term debt	18
Long-term debt, net of current maturities	59
Operating lease liabilities	1,181
Weighted-average remaining lease term – finance leases	5 years
Weighted-average remaining lease term – operating leases	5 years
Weighted-average discount rate – finance leases	6.4%
Weighted-average discount rate – operating leases	6.8%

Maturities of lease liabilities as of September 28, 2019 were as follows:

	September 28, 2019	
(In millions)	Operating Leases(1)	Finance Leases
2019 (excluding year-to-date 2019)	$ 124	$ 7
2020	442	21
2021	358	20
2022	289	16
2023	220	12
Thereafter	435	15
	1,868	91
Less imputed interest	(319)	(14)
Total	$ 1,549	$ 77
Reported as of September 28, 2019		
Accrued expenses and other current liabilities	$ 368	$ —
Short-term borrowings and current maturities of long-term debt	—	18
Long-term debt, net of current maturities	—	59
Operating lease liabilities	1,181	—
Total	$ 1,549	$ 77

(1) Operating lease payments include $122 million related to options to extend lease terms that are reasonably certain of being exercised and exclude $3 million of legally binding lease payments for an additional operating lease signed but not yet commenced. This operating lease will commence in fiscal year 2020 with a lease term of 10 years.

Adoption of the new lease accounting standard using the alternative transition method required the Company to provide relevant disclosures in accordance with ASC 840, Leases for all prior periods presented. The table below represents future minimum lease payments due under the non-cancelable portions of leases including facility leases that were accrued as store closure costs as of December 29, 2018. The table was updated from the version previously included in the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 2018 within the Notes to Consolidated Financial Statements to adjust for certain inconsistencies that management identified in the first quarter of fiscal year 2019 during the implementation of ASC 842, Leases. Specifically, the Company corrected the schedule to include additional lease commitments for option periods at the time of execution as opposed to the original extension date.

(In millions)	December 29, 2018
2019	$ 466
2020	374
2021	285
2022	214
2023	144
Thereafter	235
	1,718
Less sublease income	(11)
Total	$ 1,707

NOTE 9. DEBT

In connection with the consummation of the acquisition of CompuCom, the Company entered into a credit agreement, dated as of November 8, 2017 (the "Term Loan Credit Agreement"), which provides for a $750 million term loan facility with a maturity date of November 8, 2022. The Term Loan Credit Agreement was amended in November 2018. The Company was in compliance with all applicable financial covenants associated with the Term Loan Credit Agreement at September 28, 2019.

In May 2011, the Company entered into an amended and restated credit agreement, which was amended and restated in May 2016 for an additional five years, and was further amended in December 2016 and November 2017 (the Amended and Restated Credit Agreement including all amendments is referred to as the "Amended Credit Agreement"). The Amended Credit Agreement provides for a revolving credit facility of up to $1.2 billion and will mature on May 13, 2021. As provided in the Amended Credit Agreement, available amounts that can be borrowed are based on percentages of certain outstanding accounts receivable, credit card receivables, and inventory of the Company. At September 28, 2019, the Company had $962 million of available credit, and letters of credit outstanding totaling $65 million under the Amended Credit Agreement. There were no borrowings under the Amended Credit Agreement in the third quarter of 2019 and the Company was in compliance with all applicable financial covenants at September 28, 2019.

NON-RECOURSE DEBT

The Installment Notes (the "Timber notes receivable") and the related Securitization Notes (the "Non-recourse debt"), as defined in the 2018 Form 10-K, are scheduled to mature on January 29, 2020 and October 31, 2019, respectively. During the third quarter of 2019, the Company, through a bankruptcy remote indirect subsidiary, entered into a term loan agreement which provides for it to receive a $735 million loan on October 31, 2019 (the "Bridge Loan") that will be used to refinance the Non-recourse debt. The Bridge Loan is also non-recourse to the Company, and is secured by the Timber notes receivable. The Bridge Loan incurs interest at a rate equal to 3-month LIBOR plus 0.75% per annum from October 31, 2019 through January 29, 2020 when it will mature. Both the Timber notes receivable and the Bridge Loan are with the same third-party financial institution, and they will be settled on a net basis at maturity.

NOTE 10. STOCKHOLDERS' EQUITY

Accumulated other comprehensive income (loss) activity, net of tax, where applicable, is provided in the following table:

(In millions)	Foreign Currency Translation Adjustments	Change in Deferred Pension and Other	Total
Balance at December 29, 2018	$ (50)	$ (49)	$ (99)
Other comprehensive income activity	6	1	7
Balance at September 28, 2019	**$ (44)**	**$ (48)**	**$ (92)**

TREASURY STOCK

In November 2018, the Board of Directors approved a stock repurchase program of up to $100 million of its common stock effective January 1, 2019, which extends until the end of 2020 and may be suspended or discontinued at any time. However, the Company's ability to repurchase its common stock in 2019 is subject to certain restrictions under the Company's Term Loan Credit Agreement. During year-to-date 2019, the Company purchased approximately 4 million shares of its common stock at a cost of $10 million, excluding commissions, and as of September 28, 2019, approximately $90 million remains available for stock repurchases under the current stock repurchase authorization. During the third quarter of 2019, the Company did not repurchase any of its common stock.

In November 2019, the Board of Directors approved an increase in the authorization of the existing stock repurchase program of up to $200 million and extended the program through the end of 2021. The new authorization includes the remaining authorized amount under the existing stock repurchase program. Accordingly, the Company will have approximately $190 million available for share repurchases.

The stock repurchase authorization permits the Company to repurchase stock from time-to-time through a combination of open market repurchases, privately negotiated transactions, 10b5-1 trading plans, accelerated stock repurchase transactions and/or other derivative transactions. The exact number and timing of stock repurchases will depend on market conditions and other factors, and will be funded through available cash balances. Refer to the "Unregistered Sales of Equity Securities and Use of Proceeds" section in Part II, "Other Information" for additional information.

DIVIDENDS ON COMMON STOCK

In the third quarter and year-to-date 2019, the Company's Board of Directors declared a quarterly cash dividend in the amount of $0.025 per share on its common stock, resulting in total cash payments of $14 million and $41 million, respectively. Dividends have been recorded as a reduction to additional paid-in capital as the Company is in an accumulated deficit position. Payment of dividends is permitted under the Company's Amended Credit Agreement provided that the Company has the required minimum liquidity or fixed charge ratio, but may be limited if the Company does not meet the necessary requirements. Additionally, under the Company's Term Loan Credit Agreement, payment of dividends is permitted subject to compliance with an annual limit.

NOTE 11. EMPLOYEE BENEFIT PLANS

PENSION AND OTHER POSTRETIREMENT BENEFIT PLANS – NORTH AMERICA

The components of net periodic pension expense (benefit) for the Company's North America pension plans are as follows:

	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Service cost	**$ 2**	$ 1	**$ 6**	$ 3
Interest cost	**9**	8	**27**	26
Expected return on plan assets	**(11)**	(11)	**(32)**	(32)
Net periodic pension expense (benefit)	**$ —**	$ (2)	**$ 1**	$ (3)

During year-to-date 2019, $2 million of cash contributions were made to the North American pension plans. The Company expects the additional cash contributions to the North America pension plans during the remainder of 2019 to not be significant.

PENSION PLAN – UNITED KINGDOM

The components of net periodic pension benefit for the Company's UK pension plan are as follows:

	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Service cost	**$ —**	$ —	**$ —**	$ —
Interest cost	**1**	2	**4**	5
Expected return on plan assets	**(1)**	(2)	**(5)**	(6)
Net periodic pension benefit	**$ —**	$ —	**$ (1)**	$ (1)

The UK pension plan is in a net asset position. During year-to-date 2019, cash contributions of $2 million were made to the UK pension plan.

Net periodic pension benefits for the North America and UK pension and other postretirement benefit plans (the "Plans") are recorded at the Corporate level. The service cost for the Plans are reflected in Selling, general and administrative expenses, and the other components of net periodic pension benefits are reflected in Other income, net, in the Condensed Consolidated Statements of Operations.

NOTE 12. FAIR VALUE MEASUREMENTS

The Company measures fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions. In developing its fair value estimates, the Company uses the following hierarchy:

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Observable market based inputs or unobservable inputs that are corroborated by market data.

Level 3: Significant unobservable inputs that are not corroborated by market data. Generally, these fair value measures are model-based valuation techniques such as discounted cash flows or option pricing models using the Company's own estimates and assumptions or those expected to be used by market participants.

RECURRING FAIR VALUE MEASUREMENTS

In accordance with GAAP, certain assets and liabilities are required to be recorded at fair value on a recurring basis. The Company's assets and liabilities that are adjusted to fair value on a recurring basis are money market funds that qualify as cash equivalents, and derivative financial instruments. As of September 28, 2019 and December 29, 2018, the Company did not have any money market funds that had floating net asset values that required measurement.

The fair values of the Company's foreign currency contracts and fuel contracts are the amounts receivable or payable to terminate the agreements at the reporting date, taking into account current exchange rates and commodity prices. The values are based on market-based inputs or unobservable inputs that are corroborated by market data. Amounts associated with these derivative financial instruments were not significant for the reported periods. At September 28, 2019, Prepaid expenses and other current assets in the Condensed Consolidated Balance Sheet included less than $1 million related to derivative foreign currency and fuel contracts. At December 29, 2018, Accrued expenses and other current liabilities in the Condensed Consolidated Balance Sheet included less than $1 million related to derivative foreign currency and fuel contracts.

NONRECURRING FAIR VALUE MEASUREMENTS

In addition to assets and liabilities that are recorded at fair value on a recurring basis, the Company records certain assets and liabilities at fair value on a nonrecurring basis as required by GAAP. Generally, assets are recorded at fair value on a nonrecurring basis as a result of impairment charges. In the third quarter and year-to-date 2019, the Company recognized asset impairment charges of $5 million and $50 million, respectively. Of these asset impairment charges, $2 million and $41 million, respectively, were related to impairment of operating lease ROU assets associated with the Company's retail store locations, with the remainder primarily relating to impairment of fixed assets.

The Company regularly reviews retail store assets for impairment indicators at the individual store level, as this represents the lowest level of identifiable cash flows. When indicators of impairment are present, a recoverability analysis is performed which considers the estimated undiscounted cash flows over the retail store's remaining life and uses input from retail operations and accounting and finance personnel. These inputs include management's best estimates of retail store-level sales, gross margins, direct expenses, exercise of future lease renewal options when reasonably certain to be exercised, and resulting cash flows, by their nature, include judgments about how current initiatives will impact future performance. In the third quarter and year-to-date 2019, the assumptions used within the recoverability analysis for the retail stores were updated to consider current quarter retail store operational results and formal plans for additional retail store closures. These assumptions reflected declining sales over the forecast period, and gross margin and operating cost assumptions that are consistent with recent actual results and consider plans for future initiatives.

If the undiscounted cash flows of a retail store cannot support the carrying amount of its assets, the assets are impaired if necessary and written down to estimated fair value. The fair value of retail store assets is determined using a discounted cash flow analysis which uses Level 2 unobservable inputs that are corroborated by market data such as real estate broker's opinions. Specifically, the analysis uses assumptions of potential rental rates for each retail store location which are based on market data for comparable locations. These estimated cash flows used in the third quarter and year-to-date 2019 impairment calculation were discounted at a weighted average discount rate of 7%.

The Company will continue to evaluate initiatives to improve performance and lower operating costs. To the extent that forward-looking sales and operating assumptions are not achieved and are subsequently reduced, additional impairment charges may result. However, at the end of the third quarter and year-to-date 2019, the impairment recognized reflects the Company's best estimate of future performance.

OTHER FAIR VALUE DISCLOSURES

The fair values of cash and cash equivalents, receivables, trade accounts payable and accrued expenses and other current liabilities approximate their carrying values because of their short-term nature.

The following table presents information about financial instruments at the balance sheet dates indicated.

(In millions)	September 28, 2019 Carrying Amount	September 28, 2019 Fair Value	December 29, 2018 Carrying Amount	December 29, 2018 Fair Value
Financial assets:				
Timber notes receivable	**$ 825**	**$ 826**	$ 842	$ 835
Company-owned life insurance	**91**	**91**	91	91
Financial liabilities:				
Recourse debt:				
Term Loan, due 2022	**411**	**430**	463	490
Revenue bonds, due in varying amounts periodically through 2029	**186**	**186**	186	184
American & Foreign Power Company, Inc. 5% debentures, due 2030	**14**	**14**	14	14
Non-recourse debt — Timber notes	**737**	**737**	754	750

The following methods and assumptions were used to estimate the fair value of each class of financial instruments:

- *Timber notes receivable*: Fair value is determined as the present value of expected future cash flows discounted at the current interest rate for loans of similar terms with comparable credit risk (Level 2 measure).
- *Company-owned life insurance*: In connection with the 2013 OfficeMax merger, the Company acquired company-owned life insurance policies on certain former employees. The fair value of the company-owned life insurance policies is derived using determinable net cash surrender value (Level 2 measure).
- *Recourse debt*: Recourse debt, for which there were no transactions on the measurement date, was valued based on quoted market prices near the measurement date when available or by discounting the future cash flows of each instrument using rates based on the most recently observable trade or using rates currently offered to the Company for similar debt instruments of comparable maturities (Level 2 measure).
- *Non-recourse debt*: Fair value is estimated by discounting the future cash flows of the instrument at rates currently available to the Company for similar instruments of comparable maturities (Level 2 measure).

NOTE 13. COMMITMENTS AND CONTINGENCIES

LEGAL MATTERS

The Company is involved in litigation arising in the normal course of business. While, from time to time, claims are asserted that make demands for a large sum of money (including, from time to time, actions which are asserted to be maintainable as class action suits), the Company does not believe that contingent liabilities related to these matters (including the matters discussed below), either individually or in the aggregate, will materially affect the Company’s financial position, results of operations or cash flows.

In addition, in the ordinary course of business, sales to and transactions with government customers may be subject to lawsuits, investigations, audits and review by governmental authorities and regulatory agencies, with which the Company cooperates. Many of these lawsuits, investigations, audits and reviews are resolved without material impact to the Company. While claims in these matters may at times assert large demands, the Company does not believe that contingent liabilities related to these matters, either individually or in the aggregate, will materially affect its financial position, results of operations or cash flows.

In January 2017 and May 2017, the Consumer Protection Divisions of each of the Office of Attorney General, State of Washington ("Washington AG") and the Office of Attorney General, State of Texas ("Texas AG"), respectively, each issued a Civil Investigative Demand (“CID”) to the Company requiring the Company to produce certain documents and materials and to answer certain interrogatories relating to PC Healthcheck, a software program manufactured by a third-party vendor and provided to the Company for its customers prior to December 31, 2016. In September 2019, the Washington AG, to resolve its investigation into the PC Healthcheck product, has agreed in principle to accept payment of $900,000 and the Company has agreed to implement a compliance certification, record creation and maintenance program, subject to the completion of mutually satisfactory definitive documentation. The settlement conditions of the Washington AG are similar to the program required under the Stipulation to Entry of Order for Permanent Injunction and Monetary Judgment entered on March 29, 2019 by the U.S. District Court for the Southern District of Florida as a result of a CID issued by the Federal Trade Commission in 2016. The Company continues to cooperate with the Texas AG with respect to its investigation. At this time, it is difficult to predict the timing, the likely outcome, and/or potential range of loss, if any, of the Texas state matters.

In addition to the foregoing, OfficeMax is named as a defendant in a number of lawsuits, claims, and proceedings arising out of the operation of certain paper and forest products assets prior to those assets being sold in 2004, for which OfficeMax agreed to retain responsibility. Also, as part of that sale, OfficeMax agreed to retain responsibility for all pending or threatened proceedings and future proceedings alleging asbestos-related injuries arising out of the operation of the paper and forest products assets prior to the closing of the sale. The Company has made provision for losses with respect to the pending proceedings. Additionally, as of September 28, 2019, the Company has made provision for environmental liabilities with respect to certain sites where hazardous substances or other contaminants are or may be located. For these liabilities, our estimated range of reasonably possible losses was approximately $10 million to $20 million. The Company regularly monitors its estimated exposure to these liabilities. As additional information becomes known, these estimates may change, however, the Company does not believe any of these OfficeMax retained proceedings are material to the Company's financial position, results of operations or cash flows.

NOTE 14. DISCONTINUED OPERATIONS

In the third quarter of 2016, the Company's Board of Directors approved a plan to sell substantially all operations of the former International Division through four disposal groups (Europe, South Korea, Oceania and mainland China) (the "International Operations"). Collectively, these dispositions represent a strategic shift that had a major impact on the Company's operations and financial results and have been accounted for as discontinued operations. As of the end of fiscal 2018, the sale of the International Operations was complete, and there are no further discontinued operations in 2019.

For year-to-date 2018, the major components of Discontinued operations, net of tax presented were as follows:

(In millions)	Third Quarter 2018	Year-to-Date 2018
Sales	$ —	$ 115
Cost of goods sold and occupancy costs	—	88
Operating expenses	—	21
Restructuring charges	—	1
Other expense, net	—	(1)
Net increase of loss on discontinued operations held for sale	—	(1)
Net loss on sale of discontinued operations	—	(4)
Income tax benefit	—	(6)
Discontinued operations, net of tax	$ —	$ 5

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Safe Harbor Statement Under the Private Securities Litigation Reform Act of 1995

This document, including the following discussion and analysis, contains statements that constitute "forward-looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 27A of the Securities Act of 1933, as amended. All statements that are not statements of historical fact are forward-looking statements. Without limitation, when we use the words "believe," "estimate," "plan," "expect," "intend," "anticipate," "continue," "may," "project," "probably," "should," "could," "will" and similar expressions in this Quarterly Report on Form 10-Q, we are identifying forward-looking statements (as such term is defined in the Private Securities Litigation Reform Act of 1995). These statements appear in a number of places in this discussion and analysis and include statements regarding the intent, belief or current expectations of the Company, its directors or its officers with respect to, among other things, trends affecting the Company's financial condition or results of operations and the outcome of contingencies such as litigation and investigations. Readers are cautioned that any forward-looking statements are not guarantees of future performance and involve risks and uncertainties. More information regarding these risks, uncertainties and other important factors that could cause actual results to differ materially from those in the forward-looking statements is set forth in our discussion of Risk Factors, found in Item 1A of our Annual Report on Form 10-K filed on February 27, 2019 (the "2018 Form 10-K") with the SEC, and Forward-Looking Statements, found in Part I of our 2018 Form 10-K.

Throughout this report, the terms "Office Depot," "Company," "we," "us" and "our" mean Office Depot, Inc. and all entities included in our Condensed Consolidated Financial Statements.

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to provide information to assist readers in better understanding and evaluating our financial condition and results of operations. We recommend reading this MD&A in conjunction with our Condensed Consolidated Financial Statements and the Notes to those statements included in the "Financial Statements" section of this Quarterly Report on Form 10-Q, as well as our 2018 Form 10-K.

OVERVIEW

THE COMPANY

We are a leading provider of business services and supplies, products and technology solutions to small, medium and enterprise businesses, through a fully integrated business-to-business ("B2B") distribution platform of 1,317 retail stores, online presence, and dedicated sales professionals and technicians. Through our banner brands Office Depot®, OfficeMax®, CompuCom® and Grand&Toy®, as well as others, we offer our customers the tools and resources they need to focus on starting, growing and running their business.

As of September 28, 2019, our operations are organized into three reportable segments (or "Divisions"): Business Solutions Division, Retail Division and CompuCom Division.

The Business Solutions Division, or BSD, provides our customers with nationally branded as well as our private branded office supply and adjacencies products and services in the United States, Puerto Rico, the U.S. Virgin Islands, and Canada through dedicated sales forces, catalogs, telesales, and electronically through our Internet websites. BSD includes the distribution businesses we have acquired as part of our strategic transformation described in the section below.

The Retail Division includes our chain of retail stores in the United States, Puerto Rico and the U.S. Virgin Islands where we sell office supplies, technology products and solutions, business machines and related supplies, print, cleaning, breakroom supplies and facilities products, and furniture. In addition, our Retail Division offers a range of business-related services targeted to small businesses, technology support services as well as printing, copying, mailing and shipping services.

The CompuCom Division was formed during the fourth quarter of 2017 as a result of our acquisition of CompuCom Systems, Inc. ("CompuCom"). The CompuCom Division provides information technology ("IT") outsourcing services and products to enterprise organizations in the United States and Canada, and offers a broad range of solutions including end user computing support, managed IT services, data center monitoring and management, service desk, network infrastructure, IT workforce solutions, mobile device management, IT solutions integration, and cloud services.

STRATEGIC TRANSFORMATION

Since 2017, we have been undergoing a strategic business transformation to pivot Office Depot into an integrated B2B distribution platform, with the objective of expanding our product offerings to include value-added services for our customers and capture greater market share.

As part of this transformation, we acquired CompuCom in 2017 and an enterprise IT solutions integrator and managed services provider in 2018. The latter gives us access to a platform for selling or providing Internet of Things ("IoT") related hardware and

projects to the education market. IoT refers to the connection of intelligent systems and devices to allow them to automatically share information so that systems and devices work intelligently together to develop and enhance solutions and reduce human intervention.

We continue to expand our reach and distribution network through acquisitions of profitable regional office supply distribution businesses serving small and mid-market customers in geographic areas that were previously underserved by our network in order to strengthen our core operations. During year-to-date 2019, we acquired four small independent regional office supply distribution businesses which has allowed for an effective and accretive means to expand our distribution reach, target new business customers and grow our offerings beyond traditional office supplies. The aggregate total purchase consideration, including contingent consideration, for the four acquisitions completed in year-to-date 2019 was approximately $25 million, subject to certain customary post-closing adjustments. The aggregate purchase price was primarily funded with cash on hand.

The operating results of the acquired office supply distribution businesses are combined with our operating results subsequent to their purchase dates, and are included in the Business Solutions Division, and the operating results of CompuCom and the enterprise IT solutions integrator and managed services provider are included in the CompuCom Division. Refer to Note 2. “Acquisitions,” in Notes to Condensed Consolidated Financial Statements for additional information.

OVERVIEW OF CONSOLIDATED RESULTS FROM CONTINUING OPERATIONS

The following summarizes the more significant factors impacting our operating results from continuing operations for the 13-week and 39-week periods ended September 28, 2019 (also referred to as the "third quarter of 2019" and "year-to-date 2019," respectively) and September 29, 2018 (also referred to as the "third quarter of 2018" and "year-to-date 2018," respectively).

Our consolidated sales were 4% and 2% lower in the third quarter and year-to-date 2019, respectively, compared to the same periods of the prior year. These period-over-period decreases were primarily driven by lower sales in our Retail Division, which decreased 6% in both the third quarter and year-to-date 2019 as a result of lower comparable store sales and store closures. Our CompuCom Division also experienced lower sales of 6% in both the third quarter and year-to-date 2019 when compared to the prior year periods, primarily due to a decline in sales of services as a result of reduced business volume. Sales in our Business Solutions Division also decreased 1% in the third quarter of 2019 when compared to the prior year period, primarily due to lower revenue generated by our eCommerce channel. However, on year-to-date basis, sales in our Business Solutions Division improved by 1% primarily driven by acquisitions.

Sales	**Third Quarter**			**Year-to-Date**		
(In millions)	**2019**	2018	**Change**	**2019**	2018	**Change**
Business Solutions Division	**$ 1,350**	$ 1,364	**(1)%**	**$ 4,022**	$ 3,990	**1%**
Retail Division	**1,177**	1,254	**(6)%**	**3,352**	3,551	**(6)%**
Change in comparable store sales			**(4)%**			**(4)%**
CompuCom Division	**252**	268	**(6)%**	**758**	803	**(6)%**
Other	**3**	1	**200%**	**7**	1	**600%**
Total	**$ 2,782**	$ 2,887	**(4)%**	**$ 8,139**	$ 8,345	**(2)%**

- *Product sales* in the third quarter and year-to-date 2019 decreased 3% and 2%, respectively, from the comparative prior year periods, primarily driven by lower comparable store sales and store closures in the Retail Division. The declines in both periods were partially offset by an increase in product sales in our CompuCom Division as a result of increased discipline in our selling process and improved relationships with our product manufacturer partners.

- *Sales of services* in the third quarter and year-to-date 2019 decreased 7% and 4%, respectively, primarily driven by a decline in sales of services in our CompuCom Division. The declines in both periods were partially offset by the continued expansion of services we offer in our Retail Division, including a higher volume of product subscriptions and increased sales of our copy and print services. On a consolidated basis, services represented approximately 15% of our total sales in the third quarter and year-to-date 2019, consistent with the corresponding prior year periods.

Sales	**Third Quarter**			**Year-to-Date**		
(In millions)	**2019**	2018	**Change**	**2019**	2018	**Change**
Products	**$ 2,377**	$ 2,453	**(3)%**	**$ 6,921**	$ 7,072	**(2)%**
Services	**405**	434	**(7)%**	**1,218**	1,273	**(4)%**
Total	**$ 2,782**	$ 2,887	**(4)%**	**$ 8,139**	$ 8,345	**(2)%**

OTHER SIGNIFICANT FACTORS IMPACTING TOTAL COMPANY RESULTS

- Total gross profit decreased by $19 million or 3%, and $56 million or 3%, in the third quarter and year-to-date 2019, respectively, when compared to the same periods in 2018. The decrease in gross profit was largely driven by the flow through impact of lower sales in our CompuCom and Retail Divisions, partially offset by the implementation of the Business Acceleration Program in May 2019 which generated savings from, among other things, the optimization of labor costs in our CompuCom Division. The overall declines in gross profit in both periods were also partially offset by the impact of acquisitions in our Business Solutions Division.
- Total gross margins for the third quarter and year-to-date 2019 were consistent with the comparative prior year periods. While we incurred incremental costs related to trade tariffs on inventory we purchase from China, our recent actions, including changes to our contracting model, alternative sourcing strategies, and selective price increase pass-through efforts mitigated much of the impact of such trade tariffs to our results of operations.
- Total selling, general and administrative expenses decreased by $35 million or 6%, and $53 million or 3% in the third quarter and year-to-date 2019, respectively, when compared to the same periods in 2018. This was the result of store closures in our Retail Division and certain strategic initiatives, including the Business Acceleration Program, aimed at reducing our spend on payroll and payroll-related costs and other discretionary expenses such as professional fees, contingent labor, travel and marketing. The decreases in total selling, general, and administrative expenses in the third quarter and year-to-date 2019 were partially offset by increases in expenses associated with the expansion of our distribution network through acquisitions.
- We recorded $22 million and $105 million of merger and restructuring expenses, net in the third quarter and year-to-date 2019, respectively, compared to $14 million and $45 million in the third quarter and year-to-date 2018, respectively. Merger and restructuring expenses in the third quarter and year-to-date 2019 include $6 million and $19 million, respectively, of severance, retention, transaction and integration costs associated with business acquisitions and $16 million and $86 million, respectively, of expenses associated with restructuring activities. Refer to Note 3. “Merger and Restructuring Activity” in Notes to Condensed Consolidated Financial Statements for additional information.
- We recorded $5 million and $50 million of asset impairment charges in the third quarter and year-to-date 2019, respectively, which primarily related to impairment of operating lease ROU assets associated with the Company’s retail store locations. Refer to Note 12. “Fair Value Measurements” in Notes to Condensed Consolidated Financial Statements for additional information.
- Our effective tax rates of 35% and 39% for the third quarter and year-to-date 2019, respectively, differ from the statutory rate of 21% enacted as part of the Tax Cuts and Jobs Act primarily due to the impact of state taxes and certain nondeductible items, adjustments to tax credit benefits, and the mix of income and losses across U.S. and non-U.S. jurisdictions. Our effective tax rates of 29% and 33% for the third quarter and year-to-date 2018, respectively, were primarily influenced by the impact of excess tax deficiencies associated with stock-based compensation awards, the impact of state taxes and certain nondeductible items and the mix of income and losses across U.S. and non-U.S. jurisdictions. Refer to Note 6. “Income Taxes” in Notes to Condensed Consolidated Financial Statements for additional information.
- Diluted earnings per share from continuing operations was $0.11 in the third quarter of 2019, which is consistent with the diluted earnings per share of $0.11 in the third quarter of 2018. Diluted earnings per share from continuing operations was $0.08 in year-to-date 2019 compared to diluted earnings per share of $0.20 in year-to-date 2018.
- In each of the third quarters of 2019 and 2018, we paid a quarterly cash dividend on our common stock in the amount of $0.025 per share, resulting in total cash payments of $14 million in each respective quarter. In each of the year-to-date 2019 and 2018, we paid total cash dividends of $41 million and $42 million, respectively. In addition, under our stock repurchase program, we bought back approximately 4 million shares of our common stock in year-to-date 2019, returning another $10 million to our shareholders.
- At September 28, 2019, we had $588 million in cash and cash equivalents and $962 million of available credit under the Amended Credit Agreement. Cash provided by operating activities of continuing operations was $214 million for year-to-date 2019 compared to $555 million in the comparable prior year period. Refer to the “Liquidity and Capital Resources” section for further information on cash flows.

OPERATING RESULTS BY DIVISION

Discussion of additional income and expense items, including material charges and credits and changes in interest and income taxes follows our review of segment results.

BUSINESS SOLUTIONS DIVISION

	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Products	**$ 1,264**	$ 1,278	**$ 3,781**	$ 3,762
Services	**86**	86	**241**	228
Total Sales	**$ 1,350**	$ 1,364	**$ 4,022**	$ 3,990
% change	**(1)%**	6%	**1%**	4%
Division operating income	**$ 71**	$ 67	**$ 203**	$ 189
% of sales	**5%**	5%	**5%**	5%

Product sales in our Business Solutions Division decreased 1% and increased 1% in the third quarter and year-to-date 2019, respectively, compared to the same periods in the prior year. Both periods reflect the positive impact of acquisitions and growth in certain adjacency categories such as cleaning and breakroom supplies. While both the third quarter and year-to-date 2019 periods are also impacted by lower revenue generated in our eCommerce channel and lower sales in certain product categories such as toner, ink and office supplies, these movements in the third quarter of 2019 more than offset the increases in revenue discussed above.

Sales of services in our Business Solutions Division were flat to prior period in the third quarter of 2019, and increased by 6% on a year-to-date basis. The increase in year-to-date 2019 compared to the same period in the prior year is primarily due to acquisitions and increased sales of our managed print, fulfillment, and copy and print services. Sales of services in year-to-date 2019 also reflect the expansion of our product subscriptions for paper, toner and ink, which increased 5% when compared to the prior year period.

Our Business Solutions Division operating income was $71 million in the third quarter of 2019 compared to $67 million in the third quarter of 2018, an increase of 6% and an improvement of 35 basis points in operating income margin period-over-period. The increase in operating income in the third quarter of 2019 was related to a number of factors, including slightly improved gross profit margins reflecting our efforts to mitigate certain product cost increases and improve our distribution costs, and a reduction in selling, general and administrative expenses achieved through our Business Acceleration Program initiatives. Our Business Solutions Division reported operating income of $203 million in year-to-date 2019 as compared to $189 million in year-to-date 2018, which, as a percentage of sales, reflected a slight improvement period-over-period.

RETAIL DIVISION

	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Products	**$ 1,036**	$ 1,122	**$ 2,916**	$ 3,153
Services	**141**	132	**436**	398
Total Sales	**$ 1,177**	$ 1,254	**$ 3,352**	$ 3,551
% change	**(6)%**	(6)%	**(6)%**	(7)%
Division operating income	**$ 84**	$ 70	**$ 160**	$ 165
% of sales	**7%**	6%	**5%**	5%
Comparable store sales decline	**(4)%**	(5)%	**(4)%**	(4)%

Product sales in our Retail Division decreased 8% in the third quarter and year-to-date 2019 compared to the same respective periods in 2018. The decrease was primarily the result of closing underperforming retail stores coupled with fewer transactions in the existing locations, that was partially offset by the gradual increase in the volume of transactions whereby customers buy online for pick up in our stores (“BOPIS”). These transactions, which are included in our Retail Division results because they are fulfilled with retail store inventory and serviced by our retail store associates, have increased 6% and 14% in the third quarter and year-to-date 2019, respectively, from the same respective prior year periods.

Sales of services in our Retail Division increased 7% and 10% in the third quarter and year-to-date 2019, respectively compared to the same periods in 2018. This positive movement is the reflection of the expansion of our copy and print services and continued increase in subscription volume.

Comparable store sales in the third quarter and year-to-date 2019 decreased 4% reflecting lower store traffic, partially offset by higher conversion rate, higher sales per customer, year-over-year growth in BOPIS transactions, and an increase in loyalty program

membership. We continue to experience growth in revenues from copy and print services, offset by lower sales in traditional categories such office supplies, furniture, computers and technology related products. Our comparable store sales relate to stores that have been open for at least one year. Stores are removed from the comparable sales calculation one month prior to closing, as sales during that period are mostly related to clearance activity. Stores are also removed from the comparable sales calculation during periods of store remodeling, store closures due to hurricanes or natural disasters, or if significantly downsized. Our measure of comparable store sales has been applied consistently across periods, but may differ from measures used by other companies.

The Retail Division operating income increased 20% in the third quarter and declined 3% year-to-date 2019, respectively. As a percentage of sales this reflects a period-over-period increase of approximately 155 basis points in the third quarter and remains unchanged year-to-date. The comparative quarterly increase in operating income was mostly attributable to a higher gross margin rate and lower selling, general and administrative expenses resulting from continuous efforts to optimize costs. The year-to-date decrease in operating income is primarily due to the flow-through impact of lower sales. These impacts were nearly offset by improvements in distribution and inventory management costs, lower operating lease costs recognized as a result of the new lease accounting standard, and lower selling, general, and administrative expenses. Additionally, the Retail Division's operating income results include the impact of investments in additional service delivery capabilities, sales training, and other customer-oriented initiatives.

As of September 28, 2019, the Retail Division operated 1,317 retail stores in the United States, Puerto Rico and the U.S. Virgin Islands compared to 1,372 stores at the end of the third quarter of 2018. Charges associated with store closures are reported as appropriate in Merger and restructuring expenses, net in the Condensed Consolidated Statements of Operations. In addition, as part of our periodic recoverability assessment of owned retail stores and distribution center assets, and operating lease ROU assets, we recognize impairment charges in the Asset impairments line item of our Condensed Consolidated Statements of Operations. These charges are reflected in Corporate reporting and are not included in the determination of the Retail Division operating income. Refer to "Corporate" discussion below for additional information of expenses incurred to date.

COMPUCOM DIVISION

	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Products	**$ 71**	$ 51	**$ 209**	$ 154
Services	**181**	217	**549**	649
Total Sales	**$ 252**	$ 268	**$ 758**	$ 803
% change	**(6)%**	N/A	**(6)%**	N/A
Division operating income (loss)	**$ 3**	$ 1	**$ (11)**	$ 12
% of sales	**1%**	0%	**(1)%**	1%

Product sales in our CompuCom Division increased 39% and 36% in the third quarter and year-to-date 2019, respectively, compared to the same respective periods in 2018. Strong product sales growth was driven by increased discipline in our selling process and improved relationships with our product manufacturer partners.

Sales of services in our CompuCom Division decreased 17% and 15% in the third quarter and year-to-date 2019, respectively, compared to the same respective periods in 2018. This was primarily due to lower project-related revenue from existing customer accounts and lower business volume. Although sales of services have been declining over the past year, we are continuing our efforts to stabilize and grow revenue under our new leadership at this Division. In connection with these efforts, we are strategically refocusing on our strengths, placing greater emphasis on our core offerings beyond the traditional outsourcing services and expanding our value proposition into infrastructure modernization and digital workforce transformation.

The CompuCom Division reported operating income of $3 million and operating loss of $11 million in the third quarter and year-to-date 2019, respectively, compared to operating income of $1 million and $12 million in the third quarter and year-to-date 2018. Operating income has been increasing sequentially since the first quarter of 2019, which is mostly attributable to improved cost efficiencies as a result of our Business Acceleration Program initiatives. The year-to-date decrease in operating profitability was driven by lower sales volume, including lower project-related revenue from existing customer accounts without a commensurate reduction in associated labor-related expenses and ongoing expenditures to develop and market additional service offerings. We continue to take several actions to improve future operating performance at our CompuCom Division. These include increasing the use of automation and technology to further improve service efficiency, simplifying organizational structures to improve service velocity, and aligning sales efforts to better serve our customers and accelerate cross-selling opportunities.

OTHER

Certain operations previously included in the International Division, including our global sourcing and trading operations in the Asia/Pacific region, which we have retained, are presented as Other. These operations primarily relate to the sale of products to former joint venture partners, and are not material in any period. Also included in Other is the elimination of intersegment revenues of $3 million and $9 million for the third quarter and year-to-date 2019, respectively, and $4 million and $10 million for the third quarter and year-to-date 2018, respectively.

CORPORATE

The line items in our Condensed Consolidated Statements of Operations included as corporate activities are Asset impairments and Merger and restructuring expenses, net. These activities are managed at the Corporate level and, accordingly, are not included in the determination of Division income for management reporting or external disclosures. In addition to these charges and credits, certain selling, general and administrative expenses are not allocated to the Divisions and are managed at the Corporate level. Those expenses are addressed in the section "Unallocated Expenses" below.

Asset Impairments:

We regularly review retail store assets for impairment indicators at the individual store level, as this represents the lowest level of identifiable cash flows. When indicators of impairment are present, a recoverability analysis is performed which considers the estimated undiscounted cash flows over the retail store's remaining life and uses input from retail operations and accounting and finance personnel. These inputs include our best estimates of retail store-level sales, gross margins, direct expenses, exercise of future lease renewal options when reasonably certain to be exercised, and resulting cash flows, which, by their nature, include judgments about how current initiatives will impact future performance. If the undiscounted cash flows of a retail store cannot support the carrying amount of its assets, the assets are impaired and written down to estimated fair value. In the third quarter and year-to-date 2019, we recognized asset impairment charges of $5 million and $50 million, respectively, associated with continuing operations. Of these asset impairment charges, $2 million and $41 million, respectively, were related to the impairment of operating lease ROU assets associated with our retail store locations, with the remainder primarily relating to impairment of fixed assets.

During the third quarter of 2019, we performed our annual goodwill impairment test using a quantitative assessment that combined the income approach and the market approach valuation methodologies, and concluded that the fair value of each reporting unit exceeded their respective carrying amount as of the assessment date, which was the first day of the quarter. We also did not identify any impairment related to our indefinite-lived intangible assets that were tested quantitatively as of the assessment date. We continue to monitor the performance of our Contract reporting unit, a component of our Business Solutions Division segment, and our CompuCom reporting unit, which both passed the quantitative assessment with margins in excess of those determined in our 2018 annual assessment. The CompuCom Division reported an operating loss for year-to-date 2019 that was mainly driven by temporary shortfalls in revenue and profitability in the first quarter of 2019, and has improved its operational performance during the second and third quarters. We continue to undertake several actions to improve the future operating performance of CompuCom, including the use of automation and technology to further improve service efficiency, simplifying organizational structures to improve service velocity, and aligning sales efforts to better serve its customers and accelerate cross-selling opportunities. The anticipated impacts of these actions are reflected in key assumptions used in our quantitative assessment, and if not realized, could result in future impairment of goodwill and indefinite-lived intangible assets for the CompuCom reporting unit.

In addition, we experienced a decline in the market valuation of our common shares, which was considered in our determination of the key valuation assumptions used in our annual goodwill and indefinite-lived intangibles impairment assessment as of the first day of the quarter. The decline in our market capitalization has not resulted in a subsequent trigger for impairment during the quarter. If the decline becomes sustained or future declines in macroeconomic factors or business conditions occur, we could incur impairment charges in future periods.

Merger and Restructuring Expenses, net:

Since 2017, we have taken actions to optimize our asset base and drive operational efficiencies. These actions include acquiring profitable businesses, closing underperforming retail stores and non-strategic distribution facilities, consolidating functional activities, eliminating redundant positions and disposing of non-strategic businesses and assets. The expenses and any income recognized directly associated with these actions are included in Merger and restructuring expenses, net on a separate line in the Condensed Consolidated Statements of Operations in order to identify these activities apart from the expenses incurred to sell to and service our customers. These expenses are not included in the determination of Division operating income.

In May 2019, our Board of Directors approved a company-wide, multi-year, cost reduction and business improvement program to systematically drive down costs, improve operational efficiencies, and enable future growth investments. Under this program (the "Business Acceleration Program"), we have made and will continue to make organizational realignments stemming from process improvements, increased leverage of technology and accelerated use of automation. This has resulted and will continue to result in the elimination of certain positions and a flatter organization. In connection with the Business Acceleration Program, we also anticipate closing approximately 90 underperforming retail stores in 2020 and 2021, and 9 other facilities, consisting of distribution centers and

sales offices, of which 7 were closed as of the end of the third quarter of 2019. As a result of all of these changes, we expect to realize savings of at least $40 million in 2019, and run-rate savings of at least $100 million when fully implemented. Total estimated costs to implement the Business Acceleration Program are expected to be approximately $122 million, comprised of:

(a) severance and related employee costs of approximately $40 million
(b) recruitment and relocation costs of approximately $2 million
(c) retail store and facility closure costs of approximately $26 million
(d) third-party costs to facilitate the execution of the Business Acceleration Program of approximately $46 million
(e) other costs of approximately $8 million

Of the aggregate costs to implement the Business Acceleration Program, approximately $110 million are expected to be cash expenditures through 2021 funded primarily with cash on hand and cash from operations. In fiscal 2019, we expect to incur approximately $85 million, of which approximately $70 million will be cash, for severance and related employee costs, recruitment and relocation, and third-party costs including legal and consulting fees under the Business Acceleration Program. Of the $70 million cash expenditures expected in 2019, approximately $59 million has been paid through the end of the third quarter of 2019.

In the third quarter of 2019, we incurred $16 million in restructuring expenses associated with the Business Acceleration Program which consisted of $1 million of retail store and facility closure costs, $12 million in professional fees, and $3 million of other costs. In year-to-date 2019, we incurred $40 million of severance costs, $4 million of retail store and facility closure costs, $31 million in third-party professional fees, and $4 million of other costs incurred in connection with the Business Acceleration Program. In addition, in connection with our strategy to expand our distribution network, in the third quarter and year-to-date 2019 we incurred $6 million and $19 million, respectively, of severance, retention, transaction and integration costs.

Restructuring expenses in the third quarter and year-to-date 2019 also include facility closure and other costs associated with our Comprehensive Business Review, a program we announced in 2016. In the third quarter and year-to-date 2019, we closed 3 and 44 retail stores, respectively, and expect to close approximately 10 additional retail stores through the end of the Comprehensive Business Review program in 2019.

Unallocated Expenses:

We allocate to our Divisions functional support expenses that are considered to be directly or closely related to segment activity. These allocated expenses are included in the measurement of Division operating income. Other companies may charge more or less for functional support expenses to their segments, and our results, therefore, may not be comparable to similarly titled measures used by other companies. The unallocated expenses primarily consist of the buildings used for our corporate headquarters and personnel not directly supporting the Divisions, including certain executive, finance, legal, audit and similar functions.

Unallocated expenses were $23 million and $80 million in the third quarter and year-to-date 2019, respectively, and $19 million and $90 million for the third quarter and year-to-date 2018, respectively. The increase in the third quarter of 2019 compared to the prior year period was due to a tax credit we received in the third quarter of 2018. The decrease in year-to-date 2019 compared to year-to-date 2018 is primarily the result of our Business Acceleration Program initiatives.

Other Income and Expense:

	Third Quarter		Year-to-Date	
(In millions)	**2019**	2018	**2019**	2018
Interest income	**$ 5**	$ 7	**$ 16**	$ 18
Interest expense	**(22)**	(31)	**(68)**	(91)
Other income, net	**2**	4	**7**	11

In November 2017, we entered into a $750 million Term Loan Credit Agreement, due 2022. The Term Loan Credit Agreement was amended in November 2018 to reduce the interest rate from LIBOR plus 7.00% to LIBOR plus 5.25%. We recorded $10 million and $31 million of interest expense in the third quarter and year-to-date 2019, respectively, and $18 million and $54 million in the third quarter and year-to-date 2018, respectively, related to the Term Loan Credit Agreement.

Income Taxes:

Our effective rates for the third quarter and year to date 2019 differ from the statutory rate of 21% enacted as part of the Tax Cuts and Jobs Act primarily due to the impact of state taxes and certain nondeductible items, adjustments to certain tax benefits and the mix of income and losses across U.S. and non-U.S. jurisdictions. The Company's effective tax rates in prior periods have varied considerably as a result of several primary factors including the mix of income and losses across U.S. and non-U.S. jurisdictions, the impact of excess tax deficiencies associated with stock-based compensation awards and the derecognition of valuation allowances against deferred tax assets that were not more-likely-than-not realizable in the U.S. and certain non-U.S. jurisdictions. During 2019 and 2018, the mix of income and losses across jurisdictions, although still applicable, has become less of a factor in influencing the Company's effective tax rates due to the dispositions of the international businesses and improved operating results. As a result, the Company's effective tax rates are 35% for the third quarter and 39% for the year to date 2019, and 29% for the third quarter and 33% for the year

to date 2018. Changes in pretax income projections and the mix of income across jurisdictions could impact the effective tax rate in future quarters.

The Tax Cuts and Jobs Act repealed the corporate Alternative Minimum Tax ("AMT") and allows unutilized AMT credits to be refunded. For tax years 2018 through 2020, taxpayers may receive 50% of their uncredited balances as a cash refund with any remaining amounts refunded in full in 2021. The Company determined it is more-likely-than-not that $45 million of its AMT credits will be refunded and is expected to be received in the fourth quarter of 2019. Accordingly, the Company reclassified $45 million from non-current deferred tax assets to income tax receivables in the first quarter of 2019. The Company has not made a determination of the amount, if any, that may become a receivable in 2020 related to 2019 operations versus be utilized to offset any Federal tax liability.

During the third quarter of 2019, the Company entered into an agreement replacing existing debt collateralized by the Timber notes receivable with a term loan. The Company has previously recorded a deferred tax liability related to the taxes deferred from the original transaction. The deferred liability will be realized no later than the first quarter of 2020. It is anticipated that certain capital loss carryforwards, available tax credits and net operating losses will offset the resulting gain and no material cash income taxes will be due in upon the realization.

The Company continues to have a U.S. valuation allowance for certain U.S. federal credits and state tax attributes, which relate to deferred tax assets that require certain types of income or for income to be earned in certain jurisdictions in order to be realized. The Company will continue to assess the realizability of its deferred tax assets in the U.S. and remaining foreign jurisdictions in future periods. Changes in pretax income projections could impact this evaluation in future periods.

The Company files a U.S. federal income tax return and other income tax returns in various states and foreign jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal and state and local income tax examinations for years prior to 2017 and 2013, respectively. The acquired OfficeMax U.S. consolidated group is no longer subject to U.S. federal income tax examination, and with few exceptions, is no longer subject to U.S. state and local income tax examinations for years prior to 2013. The Company's U.S. federal income tax return for 2017 is currently under review. Generally, the Company is subject to routine examination for years 2012 and forward in its international tax jurisdictions.

It is not reasonably possible that certain tax positions will be resolved within the next 12 months. Additionally, the Company anticipates that it is reasonably possible that new issues will be raised or resolved by tax authorities that may require changes to the balance of unrecognized tax benefits; however, an estimate of such changes cannot be reasonably made.

LIQUIDITY AND CAPITAL RESOURCES

At September 28, 2019 and December 29, 2018, we had $588 million and $658 million in cash and cash equivalents, respectively, and $962 million and $947 million, respectively, of available credit under the Amended Credit Agreement (as defined in Note 9. "Debt," in Notes to Condensed Consolidated Financial Statements), for a total liquidity of approximately $1.5 billion and $1.6 billion, respectively. We currently believe that our cash and cash equivalents on hand, availability of funds under the Amended Credit Agreement, and full year cash flows generated from operations will be sufficient to fund our working capital, capital expenditures, debt repayments, common stock repurchases, cash dividends on common stock, merger integration and restructuring expenses, and future acquisitions consistent with our strategic growth initiatives for at least the next twelve months from the date of this Quarterly Report on Form 10-Q.

No amounts were drawn under the Amended Credit Agreement during the third quarter and year-to-date 2019. There were letters of credit outstanding under the Amended Credit Agreement at the end of the third quarter of 2019 totaling $65 million, and we were in compliance with all applicable financial covenants at September 28, 2019.

As disclosed in Note 9. "Debt," in Notes to Condensed Consolidated Financial Statements, during the third quarter of 2019, through a bankruptcy remote indirect subsidiary, we entered into a term loan agreement which provides for us to receive a $735 million loan on October 31, 2019 (the "Bridge Loan") that will be used to refinance our Non-recourse debt. Both the Non-recourse debt and Timber notes receivable will mature on January 29, 2020, and we expect to receive $82.5 million when they are net settled at maturity. Also, as noted in the "Income Taxes" section above, we expect to receive a refund of unutilized AMT credits of $45 million in the fourth quarter of 2019.

In addition to the acquisitions disclosed herein, we have evaluated, and will continue to evaluate, possible acquisitions and dispositions of businesses and assets. Such transactions may be material and may involve cash, our securities or the incurrence of additional indebtedness (Refer to Note 2. "Acquisitions," in Notes to Condensed Consolidated Financial Statements for additional information). To drive further operational and cost efficiencies throughout the entire organization, we initiated the Business Acceleration Program in May 2019, which will result in additional costs over the next few years including legal and consulting fees, recruitment and relocation, severance and other related costs.

In 2019, we expect capital expenditures to be up to approximately $165 million, including investments to support our critical priorities and redesign the layout of certain retail stores to enhance our in-store customer experience. These expenditures will be funded through available cash on hand and operating cash flows.

In November 2018, our Board of Directors approved a stock repurchase program of up to $100 million of our common stock effective January 1, 2019, which extends until the end of 2020 and may be suspended or discontinued at any time. However, our ability to repurchase our common stock in 2019 is subject to certain restrictions under the Term Loan Credit Agreement. During year-to-date 2019, we purchased approximately 4 million shares of our common stock at a cost of $10 million, excluding commissions and, as of September 28, 2019, $90 million remains available for stock repurchase under the current stock repurchase authorization. During the third quarter of 2019, we did not repurchase any of our common stock.

In November 2019, our Board of Directors approved an increase in the authorization of the existing stock repurchase program of up to $200 million and extended the program through the end of 2021. The new authorization includes the remaining authorized amount under the existing stock repurchase program. Accordingly, the Company will have approximately $190 million available for share repurchases. The stock repurchase authorization permits us to repurchase stock from time-to-time through a combination of open market repurchases, privately negotiated transactions, 10b5-1 trading plans, accelerated stock repurchase transactions and/or other derivative transactions. The exact number and timing of stock repurchases will depend on market conditions and other factors, and will be funded through available cash balances.

CASH FLOWS

Cash provided by (used in) operating, investing and financing activities of continuing operations is summarized as follows:

	Year-to-Date	
(In millions)	**2019**	2018
Operating activities of continuing operations	**$ 214**	$ 555
Investing activities of continuing operations	**(142)**	(181)
Financing activities of continuing operations	**(145)**	(159)

- *Operating Activities of Continuing Operations*: During year-to-date 2019, cash provided by operating activities of continuing operations was $214 million, compared to $555 million during the same period last year. This decrease in cash flows from operating activities was primarily driven by significant working capital improvements recognized in 2018 that were not expected to be replicated in 2019, lower net income from continuing operations of $69 million, cash outflows associated with our Business Acceleration Program and other nonrecurring settlements. Working capital is influenced by a number of factors, including period end sales, the flow of goods, credit terms, timing of promotions, vendor production planning, new product introductions and working capital management. Cash outflows associated with our Business Acceleration Program of approximately $59 million, a $25 million legal settlement payment which is included in the change in net working capital, and a payment in the amount of $11 million for acquisition contingent consideration were other significant contributors to the decrease in cash flow from operating activities. For our accounting policy on cash management, refer to Note 1. “Summary of Significant Accounting Policies,” in Notes to Condensed Consolidated Financial Statements.

- *Investing Activities of Continuing Operations*: Cash used in investing activities of continuing operations was $142 million in year-to-date 2019, compared to $181 million in year-to-date 2018. The cash outflow in year-to-date 2019 was driven by $123 million in capital expenditures associated with our service platform, distribution network, retail experience, and eCommerce capabilities. In addition, we spent $21 million in business acquisitions, net of cash acquired. The cash outflow in year-to-date 2018 was driven by $121 million in capital expenditures and $64 million in business acquisitions, net of cash acquired.

- *Financing Activities of Continuing Operations*: Cash used in financing activities of continuing operations was $145 million in year-to-date 2019, compared to $159 million in year-to-date 2018. The cash outflow in year-to-date 2019 primarily reflects $74 million in repayments on long and short-term borrowings, $41 million in cash dividends, $11 million in repurchases of common stock, including commissions, and a $12 million acquisition contingent consideration payment up to the amount of the acquisition-date liability. The cash outflow in year-to-date 2018 primarily consisted of $74 million in repayments on long and short-term borrowings, $42 million in cash dividends, $22 million in repurchases of common stock, and $18 million used to acquire a non-controlling equity interest related to the CompuCom Division which we later sold in December 2018.

Cash provided by operating and investing activities of discontinued operations is summarized as follows:

	Year-to-Date	
(In millions)	**2019**	2018
Operating activities of discontinued operations	**$ —**	$ 11
Investing activities of discontinued operations	**—**	66

The cash flows of discontinued operations in the first half of 2018 reflect the impact of the sale of the Company's businesses in Oceania. As of the end of fiscal 2018, the disposition of the international businesses was complete, and there are no further discontinued operations in 2019.

NEW ACCOUNTING STANDARDS

For a description of new applicable accounting standards, refer to Note 1. "Summary of Significant Accounting Policies," in Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q.

CRITICAL ACCOUNTING POLICIES

Our Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America. Preparation of these statements requires management to make judgments and estimates. Some accounting policies have a significant impact on amounts reported in these financial statements. A summary of significant accounting policies and a description of accounting policies that are considered critical may be found in our 2018 Form 10-K, in Note 1 of the Notes to the Consolidated Financial Statements and the Critical Accounting Policies and Estimates section of the Management's Discussion and Analysis of Financial Condition and Results of Operations. Except for our accounting policy update on leases described in Note 1 "Summary of Significant Accounting Policies" in Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q, there have been no significant changes to our critical accounting policies since December 29, 2018.

OTHER INFORMATION

QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

At September 28, 2019, there had not been a material change in the interest rate, foreign exchange, and commodities risks information disclosed in the "Market Sensitive Risks and Positions" subsection of the Management's Discussion and Analysis of Financial Condition and Results of Operations set forth in Item 7 of our 2018 Form 10-K.

CONTROLS AND PROCEDURES

DISCLOSURE CONTROLS AND PROCEDURES

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the possible controls and procedures. Each reporting period, we carry out an evaluation, with the participation of our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act.

Based on management's evaluation, as of September 28, 2019, our CEO and CFO concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and that such information is accumulated and communicated to management, including the CEO and CFO to allow timely decisions regarding required disclosures.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

There were no changes in our internal control over financial reporting during the quarter ended September 28, 2019 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

We are in the process of integrating the companies we acquired during the last twelve months into our overall internal control over financial reporting processes. In addition, during the first quarter of 2019, we implemented certain internal controls over financial reporting in connection with our adoption of the new lease accounting standard.

LEGAL PROCEEDINGS

For a description of our legal proceedings, see Note 13. “Commitments and Contingencies,” in Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q.

RISK FACTORS

There have been no material changes in our risk factors from those previously disclosed in the Company’s 2018 Form 10-K.

UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

During the third quarter of 2019, we did not repurchase any of our common stock in connection with the stock repurchase program that was approved by the Board of Directors in November 2018.

Period	Total Number of Shares Purchased *(In thousands)*	Average Price Paid per Share (a)	Total Number of Shares Purchased as Part of a Publicly Announced Plan or Program *(In thousands)*	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Repurchase Programs (b) *(In millions)*
June 30, 2019 — July 27, 2019	—	$ —	—	$ 90
July 28, 2019 — August 24, 2019	—	$ —	—	$ 90
August 25, 2019 — September 28, 2019	—	$ —	—	$ 90
Total	—	$ —	—	

(a) The average price paid per share for our common stock repurchases includes a per share commission paid.

(b) In November 2018, our Board of Directors approved a stock repurchase program of up to $100 million of our common stock effective January 1, 2019, which extends until the end of 2020 and may be suspended or discontinued at any time. The stock repurchase authorization permits us to repurchase stock from time-to-time through a combination of open market repurchases, privately negotiated transactions, 10b5-1 trading plans, accelerated stock repurchase transactions and/or other derivative transactions. The exact number and timing of stock repurchases will depend on market conditions and other factors, and will be funded through available cash balances. However, our ability to repurchase our common stock in 2019 is subject to certain restrictions under the Term Loan Credit Agreement. The authorized amount under the stock repurchase program excludes fees, commissions or other expenses.

In August 2019, the Board of Directors declared a quarterly cash dividend in the amount of $0.025 per share on our common stock, which was paid in cash on September 13, 2019, for a total cash payment of $14 million to the Company’s shareholders of record at the close of business on August 23, 2019. Dividends have been recorded as a reduction to additional paid-in capital as we are in an accumulated deficit position. Payment of dividends is permitted under our Amended Credit Agreement provided that we have the required minimum liquidity or fixed charge ratio, but may be limited if we do not meet the necessary requirements. Additionally, under our Term Loan Credit Agreement, payment of dividends is permitted subject to compliance with an annual limit.

EXHIBITS

10.1	Term Loan Agreement by and between OMX Timber Finance Investments I, LLC, as the Borrower, and Wells Fargo Bank, National Association, as Lender, dated as of September 27, 2019
10.2	Security Agreement by OMX Timber Finance Investments I, LLC, as Grantor, and Wells Fargo Bank, National Association, as Lender, dated as of September 27, 2019
31.1	Rule 13a-14(a)/15d-14(a) Certification of CEO
31.2	Rule 13a-14(a)/15d-14(a) Certification of CFO
32	Section 1350 Certification
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	The cover page from this Quarterly Report on Form 10-Q has been formatted in Inline XBRL and contained in Exhibit 101.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

OFFICE DEPOT, INC.
(Registrant)

Date: November 6, 2019

By: /s/ Gerry P. Smith
Gerry P. Smith
Chief Executive Officer
(Principal Executive Officer)

Date: November 6, 2019

By: /s/ Joseph T. Lower
Joseph T. Lower
Executive Vice President and
Chief Financial Officer
(Principal Financial Officer)

Date: November 6, 2019

By: /s/ Richard A. Haas
Richard A. Haas
Senior Vice President and
Chief Accounting Officer
(Principal Accounting Officer)

Exhibit 10.1

Execution Version

9398971

Term Loan Agreement

by and between

OMX Timber Finance Investments I, LLC,
as the Borrower,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Lender

Dated as of September 27, 2019

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TERM LOAN AGREEMENT

THIS TERM LOAN AGREEMENT, dated as of September 27, 2019 (as amended, modified, restated, supplemented or waived from time to time, the "Agreement"), is by and between **OMX TIMBER FINANCE INVESTMENTS I, LLC,** a Delaware limited liability company, as the borrower (together with its successors and assigns in such capacity, the "Borrower"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION,** a national banking association, as the lender (together with its successors and assigns, in such capacity, the "Lender").

The Borrower has requested that the Lender provide a term loan facility, and the Lender has indicated its willingness to do so on the terms and conditions set forth herein.

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

ARTICLE I.
DEFINITIONS

Section 1.01. Definitions.

Certain defined terms used throughout this Agreement are defined above or in this Section 1.01.

"Affiliate" of any specified Person means any other Person controlling or controlled by, or under common control with, such specified Person. For the purposes of this definition, "control" (including the terms "controlling", "controlled by" and "under common control with") when used with respect to any specified Person means the possession, direct or indirect, of the power to vote 20% or more of the voting securities of such Person or to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, by contract or otherwise. The Lender may conclusively presume that a Person is not an Affiliate of another Person unless an Authorized Officer of the Lender has actual knowledge to the contrary.

"Aggregate Outstanding Principal Balance" means, as of any date of determination, the sum of the outstanding principal balance of the Term Loan outstanding on such date.

"Alternative Interest Rate" means the rate of interest payable with respect to the Term Loan, which shall be equal to Base Rate plus one and three quarters percent (1.750%) per annum.

"Anti-Corruption Laws" means the FCPA, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery or corruption in any jurisdiction in which Borrower or any of its Affiliates is located or is doing business.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which Borrower or any of its Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Authorized Officer" means, (i) with respect to any Person, any person who is authorized to act for such Person in matters relating to the Transaction Documents and whose action is binding upon such Person, (ii) with respect to the Borrower, any member, manager or officer who is authorized to act for the Borrower, and (iii) with respect to the Lender, the Chairman or Vice President of the Board of Directors or Trustees, the Chairman or Vice Chairman of the Executive or Standing Committee of the Board of Directors

or Trustees, the President, the Chairman of the Committee on Trust Matters, any vice president, any assistant vice president, the Secretary, any assistant secretary, the Treasurer, any assistant treasurer, the Cashier, any assistant cashier, any trust officer, the Controller and any assistant controller or any other officer of the Lender customarily performing functions similar to those performed by any of the above designated officers and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with particular subject.

"Base Rate" means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate *plus* ½%, (b) LIBOR (which rate shall be calculated based upon a one month period and shall be determined on a daily basis), *plus* one percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo Bank, National Association at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo Bank, National Association's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo Bank, National Association may designate (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero).

"Borrower Documents" has the meaning given to such term in Section 3.17.

"Business Day" means any day other than (a) a Saturday or Sunday, or (b) a day on which banking institutions in New York, New York are authorized or obligated, by law or executive order, to be closed.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any governmental authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any governmental authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

(a) Office Max Incorporated ceases to own and control legally and beneficially (free and clear of all Liens), either directly or indirectly, equity securities in the Borrower representing 100% of the combined voting power of all of equity interests entitled to vote for members of the board of directors or equivalent governing body of both Member and Borrower on a fully-diluted basis; or

(b) any "change in control" or "sale" or "disposition" or similar event as defined in any Organization Document of Borrower.

"Closing Date" means the date that the conditions precedent in Section 2.02 have been satisfied.

"Code" means the Internal Revenue Code of 1986, as amended, or any successor legislation thereto.

"Collateral" has the meaning given to such term in the Security Agreement.

"Connection Income Tax" means any Other Connection Tax that is imposed on or measured by net income (however denominated) or that is a franchise Tax or a branch profits Tax.

"Contribution Agreement" means the Contribution Agreement dated as of December 21, 2004, between the Member and the Borrower.

"Credit Party Expenses" means, without limitation, all reasonable and documented out-of-pocket expenses incurred by the Lender in connection with this Agreement and the other Transaction Documents, including without limitation (a) the reasonable and documented fees, expenses, charges and disbursements: (i) of one counsel for the Lender, (ii) for photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees and publication, (iii) for the Lender's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to Borrower or its Affiliates, as necessary, and (iv) incurred during any workout, restructuring or negotiations in respect of the Obligations, (b) in connection with (i) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Transaction Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) the enforcement or protection of their rights in connection with this Agreement or the Transaction Documents or efforts to preserve, protect, collect, or enforce the Collateral (including, without limitation, in connection with, during the continuation of an Event of Default, gaining possession of, maintaining, handling, preserving, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated), or (iii) any workout, restructuring or negotiations in respect of any Obligations, (c) all customary fees and charges (as adjusted from time to time) of the Lender with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrower (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, and (d) customary charges imposed or incurred by the Lender resulting from the dishonor of checks payable by or to Borrower.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any occurrence that is, or with notice or the lapse of time or both would become, an Event of Default.

"Effective Date" means October 31, 2019.

"Eligible Assignee" means (a) a bank, insurance company, or company engaged in the business of making commercial loans, (b) any other Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (i) Lender, (ii) an Affiliate of Lender, (iii) an entity or an Affiliate of an entity that administers or manages Lender or (iv) the same investment advisor or an advisor under common control with Lender, Affiliate or advisor, as applicable, (c) any Person to whom Lender assigns its rights and obligations under this Agreement as part of an assignment and transfer of Lender's rights in and to a material portion of Lender's portfolio of asset based credit facilities, and (d) any other Person (other than a natural person), unless a Default or an Event of Default has occurred and is continuing, approved by the Borrower (each such approval not to be unreasonably withheld or delayed and shall be deemed given if the Borrower has not responded to a request for such consent within ten (10) Business Days).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor legislation thereto and the regulations promulgated and the rulings issued thereunder.

"Event of Default" has the meaning given to such term in Section 5.01.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to Lender or required to be withheld or deducted from a payment to Lender, (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 Lender being organized under the laws of, or having its principal office or applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Lender with respect to an applicable interest in the Term Loan pursuant to a law in effect on the date on which Lender acquires such interest in the Term Loan 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 Lender's assignor immediately before Lender became a party hereto or to Lender immediately before it changes its lending office, (c) Taxes attributable to Lender's failure to comply with Section 7.01(e) and (d) any withholding Taxes imposed under FATCA.

"Existing Debt" means that certain Indenture dated as of December 21, 2004, entered into between Borrower, as issuer, and Wells Fargo Trust Company, National Association (f/k/a Wells Fargo Bank, Northwest, N.A.), as indenture trustee, and those certain notes issued in connection therewith, as amended and in effect on the Closing Date.

"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 (a) any current or future regulations or official interpretations thereof, (b) any agreements entered into pursuant to Section 1471(b)(1) of the Code, and (c) any intergovernmental agreement entered into by the United States (or any fiscal or regulatory legislation, rules, or practices adopted pursuant to any such intergovernmental agreement entered into in connection therewith).

"Fee Letter" means that certain Fee Letter between the Borrower and Lender, as of the Closing Date, as amended and in effect from time to time.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Lender from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Governmental Authority" means, with respect to any Person, any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person.

"Grant" means to mortgage, pledge, sell, bargain, warrant, alienate, remise, release, convey, assign, transfer, create, and grant a lien upon and a security interest in and right of set off against, deposit, set over and confirm pursuant to the Security Agreement. A Grant of Collateral or of any other agreement or

instrument shall include all rights, powers and options (but none of the obligations) of the granting party thereunder, including the immediate and continuing right to claim for, collect, receive and give receipt for principal and interest payments in respect of such collateral or other agreement or instrument and all other moneys payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"Guarantor" means Wells Fargo & Company (as successor by merger to Wachovia Corporation, a North Carolina corporation).

"Guaranty" means the Guaranty executed as of October 29, 2004, by Guarantor for the benefit of Borrower, as successor-in-interest to OfficeMax Southern Company (formerly known as Boise Southern Company) and OfficeMax Incorporated (formerly known as Boise Cascade Corporation).

"Lender" has the meaning given to such term in the Preamble.

"Lender's Office" means Wells Fargo Bank, National Association, One Boston Place, 18th Floor, Boston, MA 02108, Attention: Lauren Murphy, or at such other address as the Lender may designate from time to time.

"Independent" means, when used with respect to any specified Person, the Person (a) is in fact independent of the Borrower, any other obligor on the Term Loan, the Lender and any Affiliate of any of the foregoing Persons, (b) does not have any direct financial interest or any material indirect financial interest in the Borrower, any such other obligor, the Lender or any Affiliate of any of the foregoing Persons and (c) is not connected with the Borrower, any such other obligor, the Lender or any Affiliate of any of the foregoing Persons as an officer, employee, trustee, partner, director or person performing similar functions.

"Indemnified Taxes" means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Borrower Document and (ii) to the extent not otherwise described in (i), Other Taxes.

"Installment Notes" means, collectively, (i) the Installment Note in the principal amount of $559,500,000 dated as of October 29, 2004, by Boise Land & Timber, L.L.C. for the benefit of Borrower, as successor-in-interest to Boise Cascade Corporation, and (ii) the Installment Note in the principal amount of $258,000,000, dated as of October 29, 2004, by Boise Land & Timber, L.L.C. for the benefit of Borrower, as successor-in-interest to Boise Southern Company.

"Interest Rate" means the rate of interest payable with respect to the Term Loan, which shall be equal to LIBOR plus 0.750% *per annum.*

"Investment Company Act" means the Investment Company Act of 1940, as amended.

"LIBOR" means, for any three (3) month period, the rate (expressed as a percentage per annum and rounded upward, if necessary, to the next nearest one hundredth of one percent (0.01%)) for a three (3) month period as published by ICE Benchmark Administration Limited (or any successor page or other commercially available source as the Lender may designate from time to time) as of 11:00 a.m., London time, as of two (2) Business Days prior to the first (1st) day of such calendar month (and, if any such published rate is below zero, then the rate shall be deemed to be zero). Each determination of LIBOR shall

be made by the Lender and shall be conclusive in the absence of manifest error. For the sake of clarity, the three (3) month LIBOR period shall begin on the Effective Date and shall run through the Maturity Date.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including, without limitation, any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing (including any UCC financing statement or any similar instrument filed against a Person's assets or properties).

"Limited Liability Company Agreement" means the Limited Liability Company Agreement of the Borrower, dated as of December 21, 2004 but effective as of November 24, 2004, between the Member and managers of the Borrower, as such agreement may be amended, modified, waived, supplemented or restated from time to time.

"Margin Stock" is as defined in Regulation U of the FRB as in effect from time to time.

"Material Adverse Effect" means a material adverse effect on the business, assets or financial condition of the Borrower or the transactions contemplated by the Borrower Documents or any of the other Transaction Documents to which the Borrower is a party (which, for avoidance of doubt, would include any dispute, litigation, investigation, or proceeding which is reasonably likely to (i) have an adverse impact of at least $10,000,000 on the value of the Collateral or (ii) impair the Lender's security interest in the Collateral).

"Maturity Date" means January 29, 2020.

"Member" means OMX Timber Finance Holdings I, LLC, a Delaware limited liability company.

"Obligations" means all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, Borrower arising under any Transaction Document or otherwise with respect to the Term Loan (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral therefor), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against Borrower of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, costs, expenses and indemnities are allowed claims in such proceeding.

"Officer's Certificate" means a certificate delivered to the Lender signed by an Authorized Officer of the Borrower, as required by this Agreement or any other Transaction Document.

"Opinion of Counsel" means a written opinion of counsel, who may be outside counsel or internal counsel, for the Borrower, from King & Spalding LLP, or other counsel reasonably acceptable to the Lender, as the case may be.

"Organization Documents" means, the certificate or articles of formation or organization and operating agreement.

"Other Connection Taxes" means Taxes imposed as a result of a present or former connection between Lender and the jurisdiction imposing such Tax (other than connections arising from Lender 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 Borrower Document, or sold or assigned an interest in the Term Loan).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Transaction Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Participant" has the meaning given to such term in Section 9.01(b).

"Payment Direction Letters" means those letters dated as of the Effective Date, from Borrower to (i) the makers of each Installment Note directing that payment under such Installment Notes be made directly to the Lender, and (ii) to the Guarantor of the Installment Notes directing that payment under such Guaranty be made directly to Lender, which letters, in all cases, shall be acknowledged by the "Indenture Trustee" (as such term is defined in the Existing Debt).

"Permitted Liens" means, with respect to the Borrower or any portion of the Collateral, (a) Liens in favor of the Lender created pursuant to this Agreement or the Security Agreement, (b) solely for the period from the Closing Date through the Effective Date (but not thereafter), Liens granted prior to the Closing Date in favor of the "Indenture Trustee" (as defined in the Existing Debt) for the benefit of the Holders of the Notes (each as defined in the Existing Debt) under the Existing Debt, (c) Liens arising by operation of law in the ordinary course of business for sums not due or sums that are being contested in good faith, and (d) Liens for state, municipal and other local taxes if such taxes shall not at the time be due and payable or if the Borrower shall currently be contesting the validity thereof in good faith by appropriate proceedings; provided, however, that Liens shall only be permitted under clauses (c) and (d) hereunder in an aggregate amount not to exceed $10,000,000 for all such matters.

"Person" means any individual, corporation, estate, partnership, business or statutory trust, limited liability company, sole proprietorship, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof or other entity.

"Proceeding" means any suit in equity, action at law or other judicial or administrative proceeding.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Requirements of Law" for any Person means any law, treaty, rule or regulation, or order or determination of an arbitrator or Governmental Authority, in each case applicable to or binding upon such Person or to which such Person is subject, whether Federal, state or local (including, without limitation, usury laws).

"Sale" has the meaning given to such term in Section 5.13.

"Sanctioned Entity" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country or territory sanctions program administered and enforced by OFAC.

"Sanctioned Person" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (d) any other Governmental Authority with jurisdiction over Lender, Borrower or any of their respective Affiliates.

"Security Agreement" means that certain Security Agreement entered into as of the Closing Date between Borrower and Lender, as amended and in effect from time to time.

"Solvent" and "Solvency" means, with respect to any Person as of any date of determination, that on such date (a) at fair valuations (on a going concern basis), the sum of such Person's debts (including contingent liabilities) is less than all of such Person's assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, and (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise), and (d) such Person is "solvent" or not "insolvent", as applicable within the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Loan" has the meaning given to such term in Section 2.01.

"Term Loan Commitment" means, as of the Closing Date, $735,000,000.

"Term Note" has the meaning given to such term in Section 2.02(a)(ii).

"Transaction Documents" means this Agreement, the Security Agreement, the Installment Notes, the Guaranty, the Payment Direction Letters and any documents or agreements executed in connection with the forgoing, as the forgoing documents and agreements are amended, modified, restated, replaced, substituted, waived, supplemented or extended from time to time.

"UCC" means the Uniform Commercial Code, as amended from time to time, as in effect in any specified jurisdiction.

"U.S. Person" means a Person who is a "United States person" under Section 7701(a)(30) of the Code.

"US PATRIOT Act" means the United States Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, signed into law on and effective as of October 26, 2001, which, among other things, requires that financial institutions, a term that includes banks, broker-dealers and investment companies, establish and maintain compliance programs to guard against money laundering activities.

Section 1.02. Rules of Construction.

(a) Unless the context otherwise requires:

(i) a term has the meaning given to it;

(ii) an accounting term not otherwise defined has the meaning given to it in accordance with generally accepted accounting principles;

(iii) "or" is not exclusive;

(iv) "including" means including without limitation;

(v) words in the singular include the plural and words in the plural include the singular;

(vi) any pronouns shall be deemed to cover all genders; and

(vii) any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified, waived or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a Person are also to its permitted successors and assigns.

(b) Any reference herein or in any other Transaction Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (i) the repayment in Dollars in full in cash or immediately available funds (or, in the case of any contingent Obligation, excluding unasserted contingent indemnification obligations, providing cash collateralization) or other collateral as may be requested by the Lender of all of the Obligations other than unasserted contingent indemnification Obligations, and (ii) the termination the Borrower Documents.

Section 1.03. LIBOR Replacement.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Transaction Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Lender and Borrower may amend this Agreement to replace LIBOR with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective upon execution thereof. No replacement of LIBOR with a Benchmark Replacement pursuant to this Section titled "Effect of Benchmark Transition Event" will occur prior to the applicable Benchmark Transition Start Date.

(b) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Lender will have the right to make Benchmark Replacement Conforming

Changes from time to time and, notwithstanding anything to the contrary herein or in any other Transaction Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(c) Notices; Standards for Decisions and Determinations. The Lender will promptly notify the Borrower of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section titled "Effect of Benchmark Transition Event," including any determination with respect to a tenor, rate or adjustment or of the occurrence or nonoccurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section titled "Effect of Benchmark Transition Event."

(d) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Term Loan and all other outstanding Obligations shall accrue interest based on the Alternative Interest Rate. During any Benchmark Unavailability Period, the component of Base Rate based upon LIBOR will not be used in any determination of LIBOR Rate.

(e) Certain Defined Terms. As used in this Section titled "LIBOR Replacement":

(i) "*Benchmark Replacement*" means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR for U.S. dollar-denominated syndicated credit facilities and (b) LIBOR Replacement Adjustment; provided that, if LIBOR Replacement as so determined would be less than zero, LIBOR Replacement will be deemed to be zero for the purposes of this Agreement.

(ii) "*Benchmark Replacement Adjustment*" means, with respect to any replacement of LIBOR with an Unadjusted Benchmark Replacement for each applicable interest period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated syndicated credit facilities at such time.

(iii) "*Benchmark Replacement Conforming Changes*" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if

the Lender determines that no market practice for the administration of LIBOR Replacement exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this Agreement.

(iv) "*Benchmark Replacement Date*" means the earlier to occur of the following events with respect to LIBOR: (1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; (2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

(v) "*Benchmark Transition Event*" means the occurrence of one or more of the following events with respect to LIBOR: (1) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; (2) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the central bank for the currency of LIBOR, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or (3) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

(vi) "*Benchmark Transition Start Date*" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Lender by notice to the Borrower.

(vii) "*Benchmark Unavailability Period*" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that LIBOR has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR for all purposes hereunder or under any Transaction Document in accordance with the Section titled "Effect of Benchmark Transition Event" and (y) ending at the time that a Benchmark Replacement has replaced LIBOR for all purposes hereunder or under any Transaction Document in accordance with the Section titled "Effect of Benchmark Transition Event.

(viii) "*Early Opt-in Election*" means the occurrence of: (1) aa determination by Lender (with a copy to the Borrower) that the Lender has determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in this Section titled "Effect of Benchmark Transition Event", are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR, and (2) the election by the Lender to declare that an Early Opt-in Election has occurred and the provision by the Lender of a written notice of such election to the Borrower.

(ix) "*Federal Reserve Bank of New York's Website*" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

(x) "*Relevant Governmental Body*" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

(xi) "*SOFR*" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

(xii) "*Term SOFR*" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

(xiii) "*Unadjusted Benchmark Replacement*" means LIBOR Replacement excluding LIBOR Replacement Adjustment.

ARTICLE II.
THE Term Loan

Section 2.01. Term Loan.

(a) Subject to the terms and conditions set forth herein, the Lender agrees to make a loan to the Borrower on the Effective Date in a principal amount equal to the Term Loan Commitment (the "Term Loan"). The Lender shall make the Term Loan available to the Borrower on the Effective Day promptly upon satisfaction of the conditions contained in Section 2.03 by causing the wire transfer of such funds in accordance with the disbursement letter dated as of the Effective Date and duly executed by the Borrower.

(b) Amounts repaid in respect of the Term Loan may not be reborrowed, and upon Lender's making of such Term Loan on the Effective Date, the Term Loan Commitments shall automatically be terminated; provided, however, if any or all of the Term Loan Commitments remain outstanding on November 6, 2019, all such commitments shall automatically be terminated on such date.

Section 2.02. Conditions Precedent to the Closing Date.

The closing of this Agreement is subject to the satisfaction of the following conditions precedent (which, in all cases, shall be in form and substance reasonably acceptable to Lender):

(a) The Lender's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif " via e-mail) (followed promptly by originals) unless otherwise specified, each properly executed by an Authorized Officer of the Borrower, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Lender:

(i) executed counterparts of this Agreement sufficient in number for distribution to the Lender and the Borrower;

(ii) a promissory note executed by the Borrower in favor of the Lender if so requested by Lender (the "Term Note");

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Authorized Officers of the Borrower as Lender may require evidencing (A) the authority of Borrower to enter into this Agreement and the other Borrower Documents and (B) the identity, authority and capacity of each Authorized Officer thereof authorized to act as an Authorized Officer in connection with this Agreement and the other Borrower Documents;

(iv) copies of Borrower's Organization Documents and such other documents and certifications as the Lender may reasonably require to evidence that the Borrower is duly organized or formed, and that Borrower is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of King & Spalding LLP, counsel to the Borrower, addressed to the Lender, as to such matters concerning the Borrower and the Borrower Documents as the Lender may reasonably request;

(vi) a favorable opinion of Kramer Levin Naftalis & Frankel LLP, counsel to Office Max Incorporated, addressed to the Lender, as to such matters concerning the Borrower Documents as the Lender may reasonably request;

(vii) a certificate signed by an Authorized Officer of the Borrower certifying (A) that the conditions specified in this Section 2.02 have been satisfied, (B) that there has been no event or circumstance since the filing of Office Depot, Inc.'s Form 10-Q with the Securities and Exchange Commission on August 7, 2019 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) to the Solvency of the Borrower as of the Closing Date after giving effect to the transactions contemplated hereby, and (D) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by Borrower and the validity against Borrower of the Borrower Documents, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect;

(viii) evidence that all insurance required to be maintained pursuant to the Borrower Documents has been obtained and is in effect;

(ix) the Security Agreement, duly executed by the Borrower;

(x) the Fee Letter, duly executed by the Borrower;

(xi) results of searches or other evidence reasonably satisfactory to the Lender (in each case dated as of a date reasonably satisfactory to the Lender) indicating the absence of Liens on the assets of the Borrower, except for Permitted Liens and Liens for which termination statements and releases, reasonably satisfactory to the Lender, are being tendered concurrently with such extension of credit or other arrangements reasonably satisfactory to the Lender for the delivery of such termination statements and releases have been made;

(xii) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Lender to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Borrower Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Lender, and

(xiii) such other assurances, certificates, documents, consents or opinions as the Lender reasonably may require.

(b) There shall not be pending any litigation or other proceeding against the Borrower.

(c) There shall not have occurred any default of any Transaction Documents.

(d) The consummation of the transactions contemplated hereby shall not violate any applicable law or any Organization Document.

(e) All fees and expenses required to be paid or reimbursed to the Lender on or before the Closing Date, to the extent invoiced at least two (2) Business Days prior to the Closing Date (or such later date as the Borrower may reasonably agree) shall have been paid in full.

(f) The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Lender to the extent invoiced at least two (2) Business Days prior to the Closing Date (or such later date as the Borrower may reasonably agree), plus, to the extent such invoice is provided at least two (2) Business Days prior to the Closing Date, such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Effective Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Lender).

(g) The Lender shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the US Patriot Act, in each case, the results of which are satisfactory to the Lender.

(h) The representations and warranties of Borrower contained in this Agreement or in any other Borrower Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the Closing Date, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects.

(i) No Default or Event of Default shall exist, or would result from making the Term Loan or from the application of the proceeds thereof.

(j) No event or circumstance which could reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect has occurred since the filing of Office Depot, Inc.'s Form 10-Q with the Securities and Exchange Commission on August 7, 2019.

Section 2.03. Conditions Precedent to the Effective Date.

The obligation of the Lender to make the Term Loan on the Effective Date in the manner specified in Section 2.01(a) is subject to satisfaction of the following conditions precedent (which, in all cases, shall be in form and substance reasonably acceptable to Lender):

(a) The Lender shall have received the following:

(i) evidence that the Borrower shall have delivered a notice of redemption to the "Indenture Trustee" (as defined in the Existing Debt) in accordance with the terms of such Existing Debt no later than October 1, 2019;

(ii) a written borrowing notice duly executed by an Authorized Officer of the Borrower not later than 1.00 p.m. (New York City time) three (3) Business Days prior to the Effective Date;

(iii) evidence that the payment of interest due under the Existing Debt on October 31, 2019 shall have been initiated on behalf of the Borrower, and such payment once received will constitute a payment in full of interest due, in compliance with the terms and conditions of the Existing Debt and the payoff letter described in clause (v) below;

(iv) a certificate signed by an Authorized Officer of the Borrower certifying (A) that the conditions specified in this Section 2.03 have been satisfied, (B) that there has been no event or circumstance since the filing of Office Depot, Inc.'s Form 10-Q with the Securities and Exchange Commission on August 7, 2019 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) to the Solvency of the Borrower as of the Effective Date after giving effect to the transactions contemplated hereby, and (D) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by Borrower and the validity against Borrower of the Borrower Documents, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect, except to the extent that the failure to obtain such consents, licenses or approvals could not reasonably be expected to result, individually, or in the aggregate, in any impairment of the value of the Collateral or the Lender's security interest therein;

(v) a payoff letter from "Indenture Trustee" (as such term is defined in the Existing Debt) under the Existing Debt or other evidence in form and substance reasonably satisfactory to the Lender evidencing that the Existing Debt has been or concurrently with the Effective Date is being paid in full, all notes issued thereunder redeemed, all obligations thereunder have been or concurrently with the Effective Date is being paid in full, all documents relating to the Existing Debt have been or concurrently with the Effective Date are being terminated, and all Liens securing obligations under the Existing Debt have been or concurrently with the Effective Date are being released.

(vi) updated Payment Direction Letters for each Installment Note and the Guaranty, duly executed by Borrower, OfficeMax Incorporated, OfficeMax Southern Company, OMX Timber Finance Holdings I, LLC and the "Indenture Trustee" (as such term is defined in the Existing Debt);

(vii) evidence that all insurance required to be maintained pursuant to the Borrower Documents has been obtained and is in effect (to reflect the renewals of policies that have occurred since the Closing Date);

(viii) results of updated searches or other evidence reasonably satisfactory to the Lender (in each case dated as of a date reasonably satisfactory to the Lender) indicating the absence of Liens on the assets of the Borrower, except for Permitted Liens and Liens for which termination statements and releases, reasonably satisfactory to the Lender, are being tendered concurrently with such extension of credit or other arrangements reasonably satisfactory to the Lender for the delivery of such termination statements and releases have been made; and

(ix) a favorable opinion of King & Spalding LLP, counsel to the Borrower, addressed to the Lender, as to such matters concerning the Borrower and the Borrower Documents as the Lender may reasonably request;

(b) There shall not be pending any litigation or other proceeding against the Borrower which could reasonably be expected to impair the value of the Collateral or the Lender's security interest therein.

(c) There shall not have occurred any default of any Transaction Documents.

(d) The consummation of the transactions contemplated hereby on the Effective Date shall not violate any applicable law or any Organization Document.

(e) The representations and warranties of Borrower contained in this Agreement or in any other Borrower Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the Effective Date, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects.

(f) The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Lender to the extent invoiced at least two (2) Business Days prior to the Effective Date (or such later date as the Borrower may reasonably agree).

(g) No Default or Event of Default shall exist, or would result from making the Term Loan or from the application of the proceeds thereof.

(h) No event or circumstance which could reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate, has occurred since the filing of Office Depot, Inc.'s Form 10-Q with the Securities and Exchange Commission on August 7, 2019.

Notwithstanding anything to the contrary contained herein, if the Effective Date has not occurred by November 6, 2019, the Term Loan Commitments shall automatically terminate as of such date, and the Lender shall have no commitment to lend or provide any further financial accommodations to the Borrower.

ARTICLE III.
COVENANTS

Section 3.01. **Maintenance of Borrower's Office, Notice of Name Change**.

The Borrower will maintain an office or agency where notices and demands to or upon the Borrower in respect of the Term Loan and this Agreement may be served; as of the date hereof, such office is as follows: 6600 North Military Trail, Boca Raton, FL 33496, Attention: Office of the General Counsel. The Borrower will give prompt written notice to the Lender of any change in such office. If at any time the Borrower shall fail to maintain any such office or shall fail to furnish the Lender with the address thereof, all notices and demands may be made or served at the last office provided by Borrower. Borrower will furnish to the Lender at least twenty (20) days' prior written notice of any change in: (i) Borrower's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) Borrower's organizational structure or jurisdiction of incorporation or formation; or (iii) Borrower's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Borrower agrees not to effect or permit any change

referred to in the preceding sentence unless it has delivered to the Lender all documents that are required in order for the Lender to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral.

Section 3.02. Existence; Separate Legal Existence.

Prior to payment in full of the Obligations:

(a) The Borrower will keep in full effect its existence, rights and franchises as a limited liability company under the laws of the State of Delaware and will 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, the Collateral and each other instrument or agreement included in the Collateral.

(b) The Borrower shall ensure that it is at all times in compliance with its Limited Liability Company Agreement (including, without limitation, Sections 7 and 9(i) thereof).

(c) The Borrower shall conduct its affairs strictly in accordance with its Organization Documents and observe all necessary, appropriate and customary statutory limited liability company formalities.

Section 3.03. Payment of Principal, Interest, and other Obligations.

The Borrower will duly and punctually pay the principal of and interest on the Term Loan in accordance with the terms of this Agreement, together with all other Obligations. The Borrower will cause all amounts owed in connection with the Installment Notes or received in connection with the Guaranty to be to be distributed directly to the Lender to pay all interest on, and principal of, the Term Loan then due and payable, together with all other Obligations.

Section 3.04. Protection of Collateral.

(a) The Borrower intends the security interest Granted pursuant to this Agreement and the Security Agreement in favor of the Lender to be prior to all other liens in respect of the Collateral, and the Borrower shall take all actions necessary to obtain and maintain, for the benefit of the Lender a first lien on and a first priority, perfected security interest in the Collateral. In connection therewith, the Borrower shall cause to be delivered into the possession of the Lender as pledgee hereunder, indorsed in blank, any "instruments" (within the meaning of the UCC), not constituting part of chattel paper, evidencing any part of the Collateral. The Lender agrees to maintain continuous possession of such Collateral as pledgee hereunder until this Agreement shall have terminated in accordance with its terms or until the Lender is otherwise authorized to release such instrument from the Collateral. The Borrower will from time to time prepare (or shall cause to be prepared), execute and deliver all such supplements and amendments hereto and all such financing statements, continuation statements, instruments of further assurance and other instruments, and will take such other action necessary or advisable to:

(i) maintain or preserve the lien and security interest (and the priority thereof) of this Agreement or carry out more effectively the purposes hereof;

(ii) perfect, publish notice of or protect the validity of any Grant made by this Agreement;

(iii) enforce any rights of the Borrower under the Collateral to the extent commercially reasonable; or

(iv) preserve and defend title to the Collateral and the rights of the Lender in such Collateral against the claims of all other Persons and parties.

(b) The Borrower designates the Lender its agent and attorney-in-fact to execute any financing statement, continuation statement or other instrument required to be executed pursuant to this Section 3.05.

Section 3.05. Payment of Taxes and Claims.

The Borrower will pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) [reserved], (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (d) no Lien has been filed with respect thereto and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

Section 3.06. Performance of Obligations.

(a) The Borrower will punctually perform and observe all of its obligations and agreements contained in this Agreement, the Transaction Documents and in the instruments and agreements included in the Collateral.

(b) The Borrower may contract with other Persons to assist it in performing its duties under this Agreement, the Transaction Documents and in the instruments and agreements included in the Collateral, and any performance of such duties by a Person identified to the Lender in an Officer's Certificate of the Borrower shall be deemed to be action taken by the Borrower.

(c) The Borrower will not take any action or permit any action to be taken by others which would release any Person from any of such Person's covenants or obligations under any of the documents relating to the Collateral, or which would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any of the documents relating to the Collateral (including, without limitation, the Installments Notes and the Guaranty).

Section 3.07. Negative Covenants.

At all times until the Obligations have been paid in full, the Borrower shall not:

(i) sell, transfer, exchange or otherwise dispose of the Collateral (or any portion thereof or interest related thereto), unless directed to do so by the Lender;

(ii) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Term Loan (other than amounts properly withheld from such payments under the Code or applicable state law) or assert any claim against any present or former Lender by reason of the payment of the taxes levied or assessed upon any part of the Collateral;

(iii) permit the validity or effectiveness of this Agreement or the Security Agreement to be impaired, or permit the lien Granted by this Agreement and the Security Agreement to be

amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations under this Agreement except as may be expressly permitted hereby, permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance (other than the lien of this Agreement or any other Transaction Document or any other Permitted Lien) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof or permit the lien of this Agreement not to constitute a valid first priority security interest in the Collateral;

(iv) to the fullest extent permitted by the Delaware Limited Liability Company Act (6 Del. C. Section 18-101, *et. seq.),* dissolve, divide, or liquidate in whole or in part;

(v) [reserved]

(vi) create any subsidiaries;

(vii) modify or amend the Limited Liability Company Agreement without the prior written consent of Lender (such consent not to be unreasonably withheld or delayed); or

(viii) permit the modification or amendment of any Transaction Document without the prior written consent of Lender (such consent not to be unreasonably withheld or delayed).

Section 3.08. Compliance with Laws.

The Borrower will comply (a) in all material respects with the Requirements of Law, except in such instances in which (i) such Requirements of Law is being contested in good faith by appropriate proceedings diligently conducted; (ii) such contest effectively suspends enforcement of the contested laws, and (iii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect, and (b) with Sections 9.18 and 9.19.

Section 3.09. Recording of Assignments.

The Borrower shall submit or cause to be submitted for recording any assignments of the Collateral requested by the Lender necessary to accomplish the Grant of the security interest of this Agreement and the Security Agreement.

Section 3.10. Investment Company Act.

Prior to payment in full of the Obligations, the Borrower is not and is not required to be registered as an "investment company" under the Investment Company Act.

Section 3.11. Borrower Consolidation and Disposition.

(a) The Borrower shall not consolidate, divide, or merge with or into any other Person.

(b) The Borrower shall not convey or transfer any portion of the Collateral to any Person (other than to the Lender pursuant to the Borrower Documents).

Section 3.12. No Other Business.

Prior to payment in full of the Obligations, the Borrower shall not engage in any business other than financing, purchasing, owning, selling, managing and enforcing the Collateral in the manner contemplated by this Agreement and the Transaction Documents and all activities incidental thereto.

Section 3.13. No Borrowing.

Until such time as the Term Loan has been fully repaid and all other Obligations due and payable under this Agreement have been paid in full, the Borrower shall not issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any indebtedness except for the Term Loan.

Section 3.14. Use of Term Loan Proceeds.

(a) The proceeds from the Term Loan shall be used exclusively to pay off the Existing Debt at maturity thereof.

(b) The Borrower shall not use the proceeds of the Term Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or extending credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the FRB; (ii) to make any payments to a Sanctioned Entity or a Sanctioned Person, to finance any investments in a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person; (iii) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws; or (iv) for purposes other than those permitted under this Agreement.

Section 3.15. Guarantees, Loans, Advances and Other Liabilities.

Except as contemplated by this Agreement or the other Borrower Documents, the Borrower shall not make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, or other investment in, any other Person.

Section 3.16. Capital Expenditures.

The Borrower shall not make any expenditure for capital assets.

Section 3.17. Representations and Warranties of the Borrower.

The Borrower represents and warrants as follows:

(a) Power and Authority. The Borrower has full power, authority and legal right to execute, deliver and perform its obligations as Borrower under this Agreement, the Security Agreement, the Fee Letter, the Term Note, and the Payment Direction Letters (the foregoing documents, the "Borrower Documents") and under each of the other Transaction Documents to which the Borrower is a party. Schedule 3.17(a) annexed hereto sets forth, as of the Closing Date, the Borrower's name as it appears in official filings in its state of organization, its state of organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number.

(b) Due Authorization and Binding Obligation. The execution and delivery of the Borrower Documents and the other Transaction Documents to which the Borrower is a party, and the consummation of the transactions provided for herein and therein have been duly authorized by all necessary action on its part. Each of the Borrower Documents and the other Transaction Documents to which the Borrower is a party has been duly executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower and is enforceable in accordance with its terms, except as enforcement of such terms may be limited by Debtor Relief Laws affecting the enforcement of creditors' rights generally and by the availability of equitable remedies.

(c) No Conflict. The execution and delivery of the Borrower Documents and the other Transaction Documents to which the Borrower is a party, the performance of the transactions contemplated thereby and the fulfillment of the terms thereof will not (i) conflict with, result in any breach of any of the material terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, any indenture, contract, agreement, mortgage, deed of trust, or other instrument to which the Borrower is a party or by which it or any of its property is bound, or (ii) contravene the terms of any of Borrower's Organization Documents.

(d) No Violation. The execution and delivery of the Borrower Documents and the other Transaction Documents to which the Borrower is a party, the performance of the transactions contemplated thereby and the fulfillment of the terms thereof will not conflict with or violate, in any material respect, any Organization Documents or Requirements of Law applicable to the Borrower.

(e) All Consents Required. All approvals, authorizations, consents, orders or other actions of any Person or any Governmental Authority required in connection with the execution and delivery of the Borrower Documents and the other Transaction Documents to which the Borrower is a party, the performance of the transactions contemplated thereby and the fulfillment of the terms thereof have been obtained, except to the extent that the failure to obtain such approvals, authorizations, consents, orders or other actions of any Person or any Governmental Authority could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

(f) No Proceedings. No litigation or administrative proceeding of or before any court, tribunal or governmental body is currently pending, or to the knowledge of the Borrower, threatened (in writing), against the Borrower or any of its respective properties (including the Collateral) or with respect to the Borrower Documents or any other Transaction Document to which the Borrower is a party that, (i) purport to affect or pertain to this Agreement, any Borrower Document or the Transaction Documents, or any of the transactions contemplated thereby, or (ii) if adversely determined, would have a Material Adverse Effect.

(g) Organization and Good Standing. The Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware and has the requisite power to own its assets and to transact the business in which it is currently engaged, and had at all relevant times, and now has, all necessary power, authority and legal right to acquire, own and pledge the Collateral and to enter into the Borrower Documents and perform its obligations thereunder. The Borrower does not have any subsidiaries.

(h) Margin Regulations; Investment Company Act. The Borrower does not own any Margin Stock. The Borrower is not engaged principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock. None of the proceeds of the Term Loan shall be used directly or indirectly for the purpose of purchasing or carrying any Margin Stock, for the purpose of extending credit to others for the purpose of purchasing or carrying any Margin Stock, or for any purpose that violates the provisions of Regulation T,

U or X of the FRB. The Borrower does not expect to acquire any Margin Stock. Neither the Borrower nor any person controlling the Borrower is an "investment company" within the meaning of the Investment Company Act.

(i) Location. The Borrower is located (within the meaning of Article 9 of the UCC) in Delaware. The Borrower agrees that it will not change its location (within the meaning of Article 9 of the UCC) without at least thirty (30) days prior written notice to the Lender.

(j) Security Interest in Collateral.

(i) The Security Agreement creates a valid, continuing and enforceable security interest (as defined in the applicable UCC) in the Collateral in favor of the Lender, which security interest is prior to all other Liens (except for Permitted Liens), and is enforceable as such against creditors of and purchasers from the Borrower;

(ii) the Installment Notes constitute "instruments" and the Guaranty constitutes a "supporting obligation" within the meaning of the applicable UCC;

(iii) the Borrower owns and has good and marketable title to such Collateral free and clear of any Lien (other than Permitted Liens), claim or encumbrance of any Person;

(iv) the Borrower has caused (or will have caused simultaneously with closing of this Agreement), the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Requirements of Law in order to perfect the security interest in such Collateral granted to the Lender under this Agreement;

(v) other than the security interest granted by the Borrower pursuant to this Agreement, the Borrower has not pledged, assigned, sold, granted a security interest in or otherwise conveyed any of such Collateral. The Borrower has not authorized the filing of and is not aware of any financing statements against the Borrower that include a description of collateral covering such Collateral other than any financing statement relating to the security interest granted by the Borrower under this Agreement. The Borrower is not aware of the filing of any judgment or tax Lien filings against the Borrower;

(vi) all original executed copies of each underlying document that constitute or evidence the Collateral have been delivered to and to the knowledge of the Borrower are in the possession of the Lender; and

(vii) none of the underlying documents that constitute or evidence the Collateral has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Borrower and Lender.

(k) Insurance. The properties of the Borrower are insured by insurance companies, which are not Affiliates of the Borrower, that the Borrower believes (in its good faith judgment) are financially sound and reputable at the time the relevant coverage is placed or renewed, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower operates. Schedule 3.17(k) sets forth a description of all insurance maintained by or on behalf of Borrower as of the Closing Date. Each insurance policy listed on Schedule 3.17(k) is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

(l) Taxes. The Borrower has filed all Federal, state and other material tax returns and reports required to be filed, and has paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those matters that satisfy each of the following criteria: (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) [reserved], (iii) such contest effectively suspends collection of the contested obligation, (iv) no Lien has been filed with respect thereto and (v) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. To the knowledge of the Borrower, there is no proposed tax assessment against the Borrower that would, if made, have a Material Adverse Effect. The Borrower is not a party to any tax sharing agreement.

(m) Compliance with Laws. The Borrower is in compliance (A) in all material respects with the Requirements of Law and its Organization Documents, except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and such contest effectively suspends enforcement of the contested laws, or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and (B) with Section 3.21.

(n) Solvency. After giving effect to the transactions contemplated by this Agreement on the Closing Date, and before and after giving effect to the Term Loan on the Effective Date, the Borrower is Solvent. As of the Closing Date and as of the Effective Date, no transfer of property has been made by the Borrower and no obligation has been incurred by the Borrower in connection with the transactions contemplated by this Agreement or the other Borrower Documents with the intent to hinder, delay, or defraud either present or future creditors of the Borrower.

(o) OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.

The Borrower is not in violation of any Sanctions. Neither the Borrower nor, to the knowledge of the Borrower, any director, officer, employee, agent or Affiliate of the Borrower (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. The Borrower has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by Borrower and its directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Borrower, and to the knowledge of Borrower, each director, officer, employee, agent and Affiliate of Borrower, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of the Term Loan will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any applicable Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws by any Person.

(p) Patriot Act. To the extent applicable, the Borrower is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended).

(q) Installment Notes and Guaranty. As of the date hereof: (i) and at all times until the Obligations have been paid in full, the Installment Notes and Guaranty are in full force and effect, (ii) no notice of Accelerated Payment Default or Maturity Date Default (as such terms are defined in the Guaranty)

has been provided to the Guarantor under the Guaranty; and (iii) the outstanding principal plus accrued interest on the Installment Notes is $834,130,539.

Section 3.18. Restricted Payments. The Borrower shall not, directly or indirectly,

(a) pay any dividend or make any distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, to any owner of a beneficial interest in the Borrower or otherwise with respect to any ownership or equity interest or security in or of the Borrower,

(b) redeem, purchase, retire or otherwise acquire for value any such ownership or equity interest or security, or

(c) set aside or otherwise segregate any amounts for any such purpose.

Section 3.19. Notices.

(a) The Borrower shall give the Lender prompt written notice of each Event of Default hereunder and of any event of default of any Transaction Document and of any other amendment or waiver of any Transaction Document, such notice to be given in accordance with Section 9.04.

(b) The Borrower shall deliver to the Lender, in form and detail reasonably satisfactory to the Lender:

(i) promptly, and in any event within three (3) Business Days after receipt thereof by Borrower, copies of each notice or other correspondence received from any Governmental Authority concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of Borrower or any other matter which, if adversely determined, could reasonably expected to have a Material Adverse Effect;

(ii) copies of any and all notices or other material written correspondence delivered or received by the Borrower or its Affiliates in connection with the Installment Notes, the Guaranty or any other Transaction Document, contemporaneously with delivery of same in the case of any such materials delivered by the Borrower or its Affiliates and promptly, and in any event within three (3) Business Days after receipt thereof, in the case of any such materials received by the Borrower or its Affiliates from a third party;

(iii) promptly after the Lender's request therefor, such information as requested pursuant to Section 9.18 hereof; and

(iv) promptly, such additional information regarding the business affairs, financial condition or operations of Borrower, or compliance with the terms of the Transaction Documents, as the Lender may from time to time reasonably request.

(c) Promptly, after an Authorized Officer or the Borrower has obtained knowledge thereof, notify the Lender:

(i) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(ii) of any dispute, litigation, investigation, proceeding or suspension between the Borrower and any governmental authority or the commencement of, or any material development in, any litigation or proceeding affecting the Borrower; and

(iii) of the filing of any Lien for unpaid taxes or otherwise against the Borrower.

Each notice pursuant to this Section shall be accompanied by a statement of an officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 3.20. Further Instruments and Acts.

(a) Upon request of the Lender, the Borrower will execute and deliver such further documents and instruments and do such further acts as may be required under any applicable law, as Lender may reasonably request or as may be reasonably necessary or proper to carry out more effectively the purpose of this Agreement and to effectuate the transactions contemplated by the Transaction Documents, including without limitation in connection with protecting the interests, or exercising any rights or remedies, with respect to the Installment Notes and Guaranty, all at the expense of the Borrower.

Section 3.21. OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.

The Borrower will comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. The Borrower shall implement and maintain in effect policies and procedures reasonably designed to ensure compliance by it and its directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

ARTICLE IV.
PAYMENTS ON THE TERM LOAN

Section 4.01. Payment of Principal and Interest; Default Rate.

(a) The Term Loan shall accrue interest at the Interest Rate on the basis of twelve 30-day months in a 360-day year. Interest shall accrue from the date the Effective Date (or the date the applicable Obligation is incurred or payable) until paid by the Borrower. Any interest, principal or other amounts due hereunder by the Borrower shall be paid to the Lender in immediately available funds by wire transfer to such account of the Lender as it designates in writing to the Borrower from time to time.

(b) The principal balance of the Term Loan shall be due and payable, together with all accrued and unpaid interest thereon, on the Maturity Date.

(c) Notwithstanding the foregoing, the entire unpaid principal balance of the Term Loan and all other Obligations shall be due and payable, if not previously paid, on the date on which an Event of Default shall have occurred and be continuing, if the Lender has declared the Obligations to be immediately due and payable in the manner provided in Section 5.02.

(d) If any Event of Default exists, all overdue Obligations shall thereafter bear interest at a fluctuating rate otherwise applicable to such amounts plus an additional two percent (2%) per annum.

Section 4.02. **Tax Treatment**.

The Borrower has entered into this Agreement with the intention that, for federal, state and local income, business and franchise tax purposes, (i) the Obligations will qualify as indebtedness secured by the Collateral and (ii) the Borrower shall not be treated as an association, taxable mortgage pool or publicly traded partnership taxable as a corporation. The Borrower and Lender, each by entering into this Agreement, agree to treat the Obligations for federal, state and local income, business and franchise tax purposes as indebtedness. The Borrower shall not cause or permit the making, as applicable, of any election under Treasury Regulation Section 301.7701-3 or any corresponding provision of applicable state law, whereby the Borrower would be treated as a corporation for federal income tax purposes and, except as required by law or the terms of this Agreement, shall not file tax returns or obtain any federal employer identification number for the Borrower, but shall treat the Borrower as a security device and as a disregarded entity for federal and any applicable state income tax purposes. The provisions of this Agreement shall be construed in furtherance of the foregoing intended tax treatment.

ARTICLE V.
EVENTS OF DEFAULT AND REMEDIES

Section 5.01. **Events of Default**.

Any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an Event of Default:

(i) a default in the payment of any principal or interest on the Term Loan or any amounts due under the Fee Letter, in all cases, when due and payable;

(ii) failure to pay any Credit Party Expenses or other amounts owed under this Agreement or any other Transaction Document within fifteen (15) days of written demand for same by Lender;

(iii) failure to pay any other Obligations (not otherwise addressed in clauses (i) or (ii) above) when due and payable, and such default shall continue for a period of five (5) Business Days;

(iv) (a) there occurs a default in the observance or performance in any covenant or agreement of the Borrower made in this Agreement or any other Borrower Document and, in the case of the covenants in Sections 3.02(b), 3.05, 3.08, and 3.19(b)(ii), such default shall continue for a period of five (5) Business Days, or (b) any representation or warranty of the Borrower made in this Agreement or any other Borrower Document shall be incorrect or misleading in any material respect when made or deemed made (or, with respect to any representation or warranty qualified by materiality, incorrect or misleading in any respect);

(v) (a) there occurs the filing of a decree or order for relief by a court having jurisdiction over the Borrower or any part of the Collateral or Guarantor in an involuntary case under any applicable Debtor Relief Laws now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Borrower or for any part of the Collateral or Guarantor, or ordering the winding-up or liquidation of the Borrower's affairs, and such decree or order shall remain unstayed and in effect for a period of thirty consecutive days or (b) if by the order of a court of competent jurisdiction, a trustee, receiver or

liquidator of Boise Land & Timber, L.L.C. shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment or an order, judgment or decree is entered by any court of competent jurisdiction on the application of a creditor adjudicating Boise Land & Timber, L.L.C. as bankrupt or insolvent, or appointing a receiver, trustee or liquidator of Boise Land & Timber, L.L.C., or for all or substantially all of Boise Land & Timber, L.L.C.'s assets, and such order, judgment or decree continues unstayed and in effect for a period of sixty (60) days from the date entered;

(vi) (a) there occurs the commencement by the Borrower or Guarantor of a voluntary case under any applicable Debtor Relief Laws now or hereafter in effect, or the consent by the Borrower or Guarantor, to the entry of an order for relief in an involuntary case under any such law, or the consent by the Borrower or Guarantor, to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Borrower or Guarantor, or for any part of the Collateral, or the making by the Borrower or Guarantor of any general assignment for the benefit of creditors, or the failure by the Borrower or Guarantor generally to pay its debts as such debts become due, or the taking of any action by the Borrower or Guarantor in furtherance of any of the foregoing or (b) Boise Land & Timber, L.L.C. (i) applies for, or consents in writing to, the appointment of a receiver, trustee or liquidator of all or substantially all of Boise Land & Timber, L.L.C.'s assets; (ii) files a voluntary petition in bankruptcy; (iii) admits in writing Boise Land & Timber, L.L.C.'s inability to pay Boise Land & Timber, L.L.C.'s debts as they become due or makes a general assignment for the benefit of creditors; (iv) files a petition or an answer seeking a reorganization (other than a reorganization not involving the liabilities of Boise Land & Timber, L.L.C.) or an arrangement with creditors or takes advantage of any bankruptcy or insolvency law; or (v) files an answer admitting the material allegations of a petition filed against Boise Land & Timber, L.L.C. in any bankruptcy, reorganization or insolvency proceeding;

(vii) the Lender shall fail to have a valid and perfected first priority security interest in the Collateral (or any portion thereof) (other than, prior to the Effective Date, as a result of Permitted Liens);

(viii) the Borrower is required to be registered as an "investment company" under the Investment Company Act;

(ix) (a) the failure by the Guarantor to honor a demand for payment by the Lender under the terms of the Guaranty, (b) the termination or attempted termination of the Guaranty, or (c) any payment by Guarantor under the Guaranty in violation of the Payment Direction Letters.

(x) (i) any material provision of this Agreement or any other Transaction Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or Borrower or any other Person contests in any manner the validity or enforceability of any material provision of this Agreement or any other Transaction Documents or the Guaranty; or Borrower, Guarantor or any other Person obligated thereunder denies that it has any or further liability or obligation under any material provision of Agreement or any other Transaction Document, or purports to revoke, terminate or rescind any material provision of this Agreement or any other Transaction Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created hereunder or under the Security Agreement; or (ii) any Lien purported to be created hereunder or under the Security Agreement shall cease to be, or shall be asserted by Borrower or any other Person not to be, a valid and perfected Lien with the priority required by this Agreement and/or the Security Agreement;

(xi) there shall occur a Change of Control; or

(xii) any event of default occurs under the Installment Note (after giving effect to any applicable grace periods).

Section 5.02. Acceleration of Maturity.

If an Event of Default should occur and be continuing (other than an Event of Default specified in Section 5.01(v), 5.01(vi)), then and in every such case the Lender may declare the Term Loan and all other Obligations to be immediately due and payable, by a notice in writing to the Borrower, and upon any such declaration the unpaid principal balance of the Term Loan, together with accrued and unpaid interest thereon through the date of acceleration and all other Obligations, shall become immediately due and payable. If an Event of Default specified in Section 5.01(v) or Section 5.01(vi) occurs, the unpaid principal balance of the Term Loan, together with accrued and unpaid interest thereon through the date of acceleration and all other Obligations, shall become immediately due and payable.

Section 5.03. Collection of Indebtedness and Suits for Enforcement by Lender.

(a) The Borrower covenants that if (i) default is made in the payment of any interest on the Term Loan when the same becomes due and payable, or (ii) default is made in the payment of the principal of the Term Loan when the same becomes due and payable, the Borrower will, upon demand of the Lender, pay to Lender the whole amount then due and payable on the Term Loan for principal and interest and all other Obligations, with interest upon the overdue principal, and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of collection, including all Credit Party Expenses.

(b) In case the Borrower shall fail forthwith to pay such amounts upon such demand, the Lender may institute a Proceeding for the collection of the sums so due and unpaid, and may prosecute such Proceeding to judgment or final decree, and may enforce the same against the Borrower or other obligor upon the Term Loan and collect in the manner provided by law out of the Collateral, wherever situated, the moneys adjudged or decreed to be payable.

(c) If an Event of Default occurs and is continuing, the Lender may, as more particularly provided in Section 5.04, in its discretion, proceed to protect and enforce its rights and by such appropriate Proceedings as the Lender shall deem most effective to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Agreement or in aid of the exercise of any power granted herein, or to enforce any other proper remedy or legal or equitable right vested in the Lender by this Agreement or by law.

Section 5.04. Remedies.

If an Event of Default shall have occurred and be continuing, the Lender may do one or more of the following (subject to Section 5.13):

(a) declare the unpaid principal amount of the Term Loan, and all interest accrued and unpaid thereon, and any other Obligations, to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower or any other Person; *provided, however*, that upon the occurrence of any Event of Default under Section 5.01(v) or (vi), the unpaid principal amount of the outstanding Term Loan and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Lender;

(b) institute Proceedings in its own name and as trustee of an express trust for the collection of all amounts then payable on the Obligations and under this Agreement with respect thereto, whether by declaration or otherwise, and all amounts payable under the Collateral, enforce any judgment obtained, and collect from the Borrower and any other obligor upon such Obligations and from the Guarantor upon the Guaranty moneys adjudged due;

(c) institute Proceedings from time to time for the complete or partial foreclosure of this Agreement with respect to the Collateral or for enforcement of its rights in the Collateral;

(d) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights and remedies of the Lender; and

(e) sell the Collateral or any portion thereof or rights or interest therein.

Section 5.05. [Reserved].

Section 5.06. The Guaranty.

(a) The Lender may (and the Borrower hereby authorizes and agrees it shall take such steps as reasonably requested by Lender to assist Lender in doing the following):

(i) if, by 1:00 p.m. (Eastern Standard Time or Daylight Time, as applicable) on the Maturity Date, the Borrower has not repaid the Obligations in full, make a demand for payment under the Guaranty; and

(ii) upon the occurrence of an Accelerated Payment Default (as defined in Guaranty), to make a demand for payment under the Guaranty.

(b) The Lender shall not be under any obligation to marshal any assets in favor of the Borrower or any other party or against or in payment of any or all of the Obligations, and, in connection therewith, shall be permitted to exercise its rights with respect to the Guaranty irrespective of whether Lender has, or may in the future, choose to exercise any other rights and remedies available to it hereunder.

Section 5.07. Unconditional Rights of Lender To Receive Principal and Interest.

Notwithstanding any other provisions in this Agreement, the Lender shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest, if any, on the Installment Note and all payments under the Guaranty on or after the respective due dates thereof and such right shall not be impaired without the consent of Lender.

Section 5.08. Restoration of Rights and Remedies.

If the Lender has instituted any Proceeding to enforce any right or remedy under this Agreement and such Proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Lender, then and in every such case, the Borrower and the Lender shall, subject to any determination in such Proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Lender shall continue as though no such Proceeding had been instituted.

Section 5.09. Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.10. Delay or Omission Not a Waiver.

No delay or omission of the Lender to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Lender may be exercised from time to time, and as often as may be deemed expedient, by the Lender, as the case may be.

Section 5.11. Waiver of Past Defaults.

The Lender may, in its absolute and sole discretion, elect to waive any Events of Default under this Agreement; provided, however, any such waiver must be explicit and in a writing signed by the Lender.

Section 5.12. Waiver of Stay or Extension Laws.

The Borrower covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead or in any manner whatsoever, claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Agreement; and the Borrower (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Lender, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.13. Sale of Collateral.

(a) The power to effect any sale or other disposition (a "Sale") of any portion of a Collateral pursuant to Section 5.04 is expressly subject to the provisions of this Section 5.13. The power to effect any such Sale shall not be exhausted by any one or more Sales as to any portion of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral shall have been sold or all amounts payable on the Obligations under this Agreement shall have been paid in full.

(b) [Reserved]

(c) In connection with a Sale of all or any portion of the Collateral:

(i) [reserved];

(ii) the Lender may bid for and acquire the property offered for Sale in connection with any Sale thereof, and, subject to any requirements of, and to the extent permitted by, Requirements of Law in connection therewith, may purchase all or any portion of the Collateral in a private sale, and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting the gross Sale price against the outstanding Obligations, and any property so acquired by the Lender shall be held and dealt with by it in accordance with the provisions of this Agreement;

(iii) the Lender shall execute and deliver an appropriate instrument of conveyance transferring its interest in any portion of the Collateral in connection with a Sale thereof;

(iv) the Lender is hereby irrevocably appointed the agent and attorney-in-fact of the Borrower to transfer and convey its interest in any portion of the Collateral in connection with a Sale thereof, and to take all action necessary to effect such Sale; and

(v) no purchaser or transferee at such a Sale shall be bound to ascertain the Lender's authority, inquire into the satisfaction of any conditions precedent or see to the application of any moneys.

Section 5.14. Action on Term Loan.

The Lender's right to seek and recover judgment on the Obligations or under this Agreement shall not be affected by the seeking, obtaining or application of any other relief under or with respect to this Agreement or the Obligations. Neither the lien of this Agreement nor any rights or remedies of the Lender shall be impaired by the recovery of any judgment by the Lender against the Borrower or by the levy of any execution under such judgment upon any portion of the Collateral or upon any of the assets of the Borrower. Any money or property collected by the Lender shall be applied in accordance with subsection 5.04(b).

Section 5.15. Performance and Enforcement of Certain Obligations.

Promptly following a request from the Lender to do so, the Borrower shall take all such lawful action as the Lender may request to compel or secure the performance and observance by the Borrower, any issuer of the Installment Notes or the Guarantor of each of their obligations to the Borrower under or in connection with the Installment Notes, the Guaranty and the other the Transaction Documents, and to exercise any and all rights, remedies, powers and privileges lawfully available to the Borrower under or in connection with the Installment Notes, the Guaranty and the other Transaction Documents to the extent and in the manner directed by the Lender, including institution of legal or administrative actions or proceedings to compel or secure performance of obligations under the Transaction Documents (including, without limitation, if requested by Lender, sending notices of demand under the Guaranty).

ARTICLE VI.
DUTIES AND RIGHTS OF LENDER

Section 6.01. Duties of Lender.

(a) If an Event of Default has occurred and is continuing, the Lender shall exercise the rights and powers vested in it by this Agreement and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs with respect to the Collateral.

(b) No implied covenants or obligations shall be read into this Agreement against the Lender; and (ii) the Lender may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Lender and conforming to the requirements of this Agreement; however, the Lender shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Agreement.

(c) The Lender shall not be liable for any error of judgment made in good faith by an Authorized Officer; and the Lender shall not be liable with respect to any action it takes or omits to take in

good faith in accordance with a direction received by it in accordance with this Agreement or any other Transaction Document.

(d) Every provision of this Agreement that in any way relates to the Lender is subject to paragraphs (a), (b), (c) and (g) of this Section 6.01.

(e) The Lender shall not be liable for interest on any money received by it.

(f) Money held in trust by the Lender need not be segregated from other funds except to the extent required by law.

(g) The Lender shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement, to expend or risk its own funds or otherwise incur financial liability pursuant to this Agreement.

(h) Every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Lender shall be subject to the provisions of this Section 6.01.

(i) The Lender shall not be deemed to have notice of any Event of Default unless such notice has been delivered in accordance with Section 9.09.

Section 6.02. Rights of Lender.

(a) The Lender may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Lender need not investigate any fact or matter stated in the document.

(b) Before the Lender acts or refrains from acting, it may require an Officer's Certificate, or, with respect to legal matters, an Opinion of Counsel. The Lender shall not be liable for any action it takes or omits to take in good faith in reliance on an Officer's Certificate or Opinion of Counsel.

(c) The Lender may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys or a custodian or nominee, and the Lender shall not be responsible for any misconduct or negligence on the part of, or for the supervision of, any such agent, attorney, custodian or nominee appointed with due care by it hereunder.

(d) The Lender shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers, provided, however, that the Lender's conduct does not constitute gross negligence or willful misconduct, as determined by a court of competent judgment by final and non-appealable judgment.

(e) The Lender may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Agreement and the Term Loan shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Lender shall not be bound to make any investigation into the performance of the Borrower under this Agreement or any other Transaction Document or into the matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other document, but the Lender, in its discretion, may make any further inquiry or investigation into those matters that it deems appropriate, and if the Lender determines to inquire further, it

shall be entitled to examine the books, records and premises of the Borrower, personally or by agent or attorney.

Section 6.03. Lender's Disclaimer.

The Lender (a) shall not be responsible for and makes no representation as to the validity or adequacy of this Agreement, the Limited Liability Company Agreement or any other Transaction Document, the validity or sufficiency of any security interest intended to be created or the characterization of the Term Loan for tax purposes; (b) shall not be accountable for the Borrower's use of the proceeds from the Term Loan; and (c) shall not be responsible for any statement of the Borrower in this Agreement or in any Transaction Document.

Section 6.04. Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Transaction Document, the interest paid or agreed to be paid under the Transaction Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Term Loan or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Lender exceeds the Maximum Rate, Lender may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 6.05. Indemnity.

The Borrower shall reimburse the Lender for all Credit Party Expenses, which amounts shall be due and payable the earlier of: (a) the date that is thirty (30) days from the demand and (b) to the extent invoiced prior to the Maturity Date, the Maturity Date. The Borrower shall indemnify the Lender and each Related Party of the Lender against any and all losses, claims, causes of action, damages, settlements, costs, liabilities or related expenses (including attorneys' fees) incurred by it or asserted against it in connection with, arising out of, or as a result of (i) the execution or delivery of this Agreement, any other Transaction Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, the administration of this Agreement and the other Transaction Documents, (ii) the Term Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of hazardous materials on or from any property owned or operated by Borrower, or any environmental liability related in any way to Borrower, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower or any of Borrower's directors, shareholders or creditors, and regardless of whether Lender or any of its Related Parties is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Lender or any of its Related Parties; provided that such indemnity shall not, as to Lender or any of its Related Parties, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Lender or any of its Related Parties or (y) result from a claim brought by Borrower against Lender or any of its Related Parties for breach in bad faith of such Lender's obligations hereunder or under any other Transaction Document, if the Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. All amounts due under this Section shall

be due and payable on demand therefor. This Section 6.05 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

The agreements in this Section shall survive the repayment, satisfaction or discharge of all the Obligations. To the extent that any payment by or on behalf of the Borrower is made to Lender or Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

The Lender shall notify the Borrower promptly of any claim for which it may seek indemnity. Failure by the Lender to so notify the Borrower shall not relieve the Borrower of its obligations hereunder or under the Limited Liability Company Agreement. The Borrower need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Lender through the Lender's own willful misconduct, negligence or bad faith.

Section 6.06. Successors and Assigns.

Any successor Lender (in accordance with Section 9.08; and to the extent there is a conflict between this Section 6.06 and Section 9.08, Section 9.08 shall govern) shall enter into an assignment and assumption agreement and deliver a written acceptance of its appointment to the retiring Lender and to the Borrower. Thereupon the resignation of the retiring Lender shall become effective, and the successor Lender shall have all the rights, powers and duties of the Lender under this Agreement. The retiring Lender shall promptly transfer all property (including all Collateral) held by it as Lender to the successor Lender and shall, at the sole expense of the Borrower, execute and deliver such instruments and such other documents as may reasonably be required to more fully and certainly vest and confirm in the successor Lender all such rights, powers, duties and obligations.

Notwithstanding the replacement of the Lender pursuant to this Section 6.06, the Borrower's obligations under Section 6.05 shall continue for the benefit of the retiring Lender.

If the Lender consolidates with, merges or converts into, or transfers all or substantially all its retail portfolio to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Lender.

ARTICLE VII.
TAXES, YIELD PROTECTION AND ILLEGALITY

Section 7.01. Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Transaction Document shall be made free and clear of and without reduction or withholding for any Taxes, provided that if the Borrower shall be required by applicable law to deduct any Taxes from such payments, then (i) if such Taxes are Indemnified Taxes, the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Lender within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority under this Section 7.01, the Borrower shall deliver to the Lender 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 Lender.

(e) FATCA. If a payment made to the Lender under any Transaction Document would be subject to U.S. federal income withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower such documentation as may be necessary for the Borrower to comply with its obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Withholding Tax Forms. If Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Transaction Document, it shall deliver to the Borrower, at the time or times reasonably requested by the Borrower, such properly completed and executed documentation reasonably requested by the Borrower (including an IRS Form W-9 if Lender is a U.S. Person or an applicable IRS Form W-8 if Lender is not a U.S. Person) as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Lender, if reasonably requested by the Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not Lender is subject to backup withholding or information reporting requirements.

(g) Treatment of Certain Refunds. If the Lender 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 by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Lender agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender in the event the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 7.01(g), in no event will the Lender be required to pay any amount to the Borrower pursuant to this Section 7.01(g) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender 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 payment or additional amounts with respect to such Tax had never been paid. This

subsection shall not be construed to require the Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

Section 7.02. Illegality.

If Lender determines that any law has made it unlawful, or that any governmental authority has asserted that it is unlawful, for Lender or its applicable lending office to make, maintain or fund LIBOR rate loans, or to determine or charge interest rates based upon LIBOR, or any governmental authority has imposed material restrictions on the authority of Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by Lender to the Borrower, any obligation of Lender to make or continue LIBOR rate loans shall be suspended until Lender notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender, prepay all LIBOR rate loans immediately, if such Lender may not lawfully continue to maintain such LIBOR rate loans. Upon any such prepayment, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 7.03. Inability to Determine Rates.

If the Lender determines that for any reason in connection with any request for a LIBOR rate loan or a continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount of such LIBOR loan, (b) adequate and reasonable means do not exist for determining the LIBOR rate, or (c) the LIBOR rate does not adequately and fairly reflect the cost to such Lender of funding the Term Loan, the Lender will promptly so notify the Borrower. Thereafter, the obligation of the Lender to maintain LIBOR rate loans shall be suspended until the Lender revokes such notice. Upon receipt of such notice, the Term Loan shall automatically be converted into a loan based upon the Base Rate.

Section 7.04. Increased Costs; Reserves on LIBOR Rate Loans.

(a) Increased Costs Generally. If any (i) Change in law, or (ii) compliance by Lender with any direction, request, or requirement (irrespective of whether having the force of law) of any governmental authority or monetary authority (including Regulation D of the FRB), shall:

(A) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in or by, the Lender (except any reserve requirement reflected LIBOR);

(B) subject the Lender to any Tax of any kind whatsoever with respect to this Agreement or the Term Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof, other than any Tax (or change in the basis of taxation with respect to any Tax) that is (1) an Indemnified Tax, (2) described in clauses (b) through (d) of the definition of Excluded Tax or (3) any Connection Income Tax; or

(C) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or the Term Loan made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining the Term Loan, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will

pay to such Lender, such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate loans hereunder.

(b) Capital Requirements. If the Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, or the Term Loan made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of the Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate the Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on LIBOR Rate Loans. The Borrower shall pay to the Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each LIBOR loan equal to the actual costs of such reserves allocated to such loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on the Maturity Date.

Section 7.05. Survival.

All of the Borrower's obligations under this Article VII shall survive repayment of all other Obligations hereunder.

ARTICLE VIII.
Collections and application of funds

Section 8.01. Collection of Money.

Except as otherwise expressly provided herein, the Lender may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Lender pursuant to this Agreement. The Lender shall apply all such money received by it as provided in this Agreement. Except as otherwise expressly provided in this Agreement, if any Event of Default occurs in the making of any

payment or performance under any agreement or instrument that is part of the Collateral, the Lender may take such action as may be appropriate to enforce such payment or performance, including the institution and prosecution of appropriate Proceedings. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Agreement and any right to proceed thereafter as provided in Article V.

Section 8.02. Application of Funds.

(a) On the Business Day immediately preceding the Maturity Date (or, if earlier, upon acceleration of the Obligations in accordance with the terms of this Agreement), the Lender shall determine the amount required to repay the Obligations in full on such date, and provide the Borrower with notice of same.

(b) On the Maturity Date (or, if earlier, upon acceleration of the Obligations in accordance with the terms of this Agreement), all funds received by the Lender from the Collateral or otherwise on account of the Obligations shall be applied by the Lender in the following order:

(i) FIRST, to the Lender for all outstanding Credit Party Expenses, any other additional expenses incurred by Lender in connection with the transactions contemplated by the Transaction Documents;

(ii) SECOND, to Lender an amount equal to the Aggregate Outstanding Principal Balance held by Lender, together with all accrued and unpaid interest thereon;

(i) THIRD, to Lender an amount equal to all other outstanding Obligations; and

(ii) FOURTH, the balance, if any, after all the Obligations have been paid in full, to the Borrower or as otherwise required by applicable law.

(c) Notwithstanding the foregoing, if, prior to the Maturity Date, Lender receives any funds which are proceeds of the Collateral (other than with respect to the payment of Credit Party Expenses), the Borrower hereby authorizes the Lender to hold such funds until the Obligations shall have been paid in full and this Agreement terminated in conjunction therewith and, as and when all or a portion of the Obligations become due and owing, apply such funds to the Obligations. Any such funds shall be held by Lender in a non-interest bearing account in the name of the Lender, which shall be under the sole dominion and control of the Lender, and which may be comingled with other Lender funds, and shall at all times continue to constitute Collateral hereunder.

ARTICLE IX.
MISCELLANEOUS

Section 9.01. [Reserved].

Section 9.02. Form of Documents Delivered to Lender.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an Authorized Officer of the Borrower may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which the certificate or opinion is based are erroneous. Any such certificate of an Authorized Officer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of an appropriate Person stating that the information with respect to such factual matters is in the possession of the such Person, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Agreement, they may, but need not, be consolidated and form one instrument.

(d) Whenever in this Agreement, in connection with any application or certificate or report to the Lender, it is provided that the Borrower shall deliver any document as a condition of the granting of such application, or as evidence of the Borrower's compliance with any term hereof, it is intended that the truth and accuracy in all material respects, at the time of the granting of such application or at the effective date of such certificate or report (as the case may be), of the facts and opinions stated in such document shall in such case be conditions precedent to the right of the Borrower to have such application granted or to the sufficiency of such certificate or report. The foregoing shall not, however, be construed to affect the Lender's right to rely upon the truth and accuracy of any statement or opinion contained in any such document as provided in Article VI.

Section 9.03. Amendments.

No amendment or waiver of any provision of this Agreement or any other Transaction Document (including, without limitation, the Installment Notes and Guaranty) and no consent to any departure by Borrower therefrom, shall be effective unless in writing signed by the Lender and the Borrower, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.04. Notices, etc., to Lender and Others.

Any request, demand, authorization, direction, notice, consent, waiver or other documents provided or permitted by this Agreement shall be in writing and if such request, demand, authorization, direction, notice, consent, or waiver is to be made upon, given or furnished to or filed with:

(i) the Lender by the Borrower shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Lender and received at the Lender's Office, or

(ii) the Borrower by the Lender shall be sufficient for every purpose hereunder if in writing and mailed first-class, postage prepaid to the Borrower addressed to: OMX Timber Finance Investments I, LLC, 6600 North Military Trail, Boca Raton, FL 33496, Attention: Office of the General Counsel, or at any other address previously furnished in writing to the Lender by the Borrower.

Section 9.05. No Waiver; Cumulative Remedies.

No failure by Lender to exercise, and no delay by Lender in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right,

remedy, power or privilege hereunder or under any other Transaction Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Transaction Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether Lender may have had notice or knowledge of such Default or Event of Default at the time.

Section 9.06. Survival.

All representations and warranties made hereunder and in any other Transaction Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by Lender or on its behalf and notwithstanding that Lender may have had notice or knowledge of any Default or Event of Default at any time, and shall continue in full force and effect as long as the Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 9.07. Effect of Headings.

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 9.08. Successors and Assigns.

(a) All covenants and agreements in this Agreement and the Borrower Documents by the Borrower shall bind its successors and assigns, whether so expressed or not, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or under any other Borrower Document without the prior written consent of Lender. All agreements of the Lender in this Agreement shall bind its successors and assigns; all assignments and participations by Lender shall be governed by clauses (b) through (d) below.

(b) Participations. The Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Term Loan owing to it); provided that (i) Lender's obligations under this Agreement shall remain unchanged, (ii) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in this Agreement as if such Participant was a Lender hereunder.

(i) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement. Subject to subsection (ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 7.01 and Section 7.04 (subject to the requirements and limitations therein, including the requirements under Section 7.01(e) (it being understood that any documentation required under Section 7.01(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.08(d).

(ii) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 7.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 7.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 7.01 as though it were a Lender.

(iii) If Lender sells a participation to any Person, Lender shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loan (the "Participant Register"); provided that 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 the Term Loan) to any Person except to the extent that such disclosure is necessary to establish that the Term Loan is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and 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.

(c) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release Lender from any of its obligations hereunder or substitute any such pledgee or assignee for Lender as a party hereto.

(d) Assignment. Lender may, at any time, assign all of its rights and obligations under this Agreement to an Eligible Assignee (including the Term Loans at the time owing to it), or any portion thereof; provided, however, that, so long as no Default or Event of Default has occurred and is continuing, such assignment shall be subject to the Borrower's prior consent (such consent not to be unreasonably withheld or delayed and shall be deemed given if the Borrower has not responded to a request for such consent within ten (10) Business Days). To the extent any such assignment is a partial assignment of the Term Loans owing to Lender, the parties hereto agree to enter into any amendments necessary to modify this Agreement to provide for multiple lenders.

(e) Maintenance of Register. The Term Loan is issued in registered form as to both principal and stated interest. The Lender will maintain a register (the "Register") for the recordation of the name and address of each holder of the Term Loan (each, a "Registered Holder"). The Lender will be the initial Registered Holder. All amounts payable under the Term Loan will be paid only to the Registered Holder. If a Registered Holder shall transfer and assign any interest in the Term Loan in any manner, Wells Fargo Bank, National Association, in its capacity as Lender, will note the transfer and assignment appropriately on the Register, which shall identify such transferee and assignee as the new Registered Holder of such interest. This Section 9.08(e) shall be construed so that the Term Loan is at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any corresponding provisions of succeeding law.

Section 9.09. Severability.

In case any provision in this Agreement or in any Transaction Document be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 9.10. Third Party Beneficiaries.

Nothing in this Agreement or in Borrower Documents, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, and any other party secured hereunder, and any other Person with an ownership interest in any part of the Collateral, any benefit or any legal or equitable right, remedy or claim under this Agreement.

Section 9.11. Legal Holidays.

In any case where the date on which any payment is due shall not be a Business Day, then (notwithstanding any other provision of this Agreement) payment need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date on which nominally due, and no interest shall accrue for the period from and after any such nominal date.

Section 9.12. GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER BORROWER DOCUMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

(b) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. Each party hereto (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this subsection 11.12(b).

Section 9.13. Counterparts.

This Agreement may be executed in any number of counterparts (including by facsimile), each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 9.14. Borrower Obligation.

No recourse may be taken, directly or indirectly, with respect to the obligations of the Borrower or the Lender under this Agreement or any certificate or other writing delivered in connection herewith or therewith, against (i) the Lender in its individual capacity, (ii) any owner of a beneficial interest in the Borrower or (iii) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Lender in its individual capacity, any holder of a beneficial interest in the Borrower or the Lender or of any successor or assign of the Lender in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Lender has no such obligations in their individual capacity) and except that any such partner, owner or beneficiary shall be fully liable, to the extent provided by applicable law, for any unpaid consideration for stock, unpaid capital contribution or failure to pay any installment or call owing to such entity. For all purposes of this Agreement, the performance of any

duties or obligations of the Borrower hereunder shall be subject to, and entitled to the benefits of, the terms and provisions of the Limited Liability Company Agreement.

Section 9.15. No Petition.

No recourse shall be had against any officer, administrator, member, director, employee, security holder or incorporator of the Borrower or their respective successors or assigns for the payment of any amounts payable under this Agreement or any other Transaction Document. It is understood that the foregoing provisions of this Section 9.15 shall not (i) prevent recourse to the Collateral for the sums due or to become due under any security, instrument or agreement which is part of the Collateral or constitute a waiver, release or discharge of any indebtedness or obligation evidenced or secured by this Agreement or payable under any other Transaction Document until such Collateral has been realized and distributed, whereupon any such outstanding indebtedness or obligation shall be extinguished.

Section 9.16. Inspection; Confidentiality.

The Borrower agrees that, on reasonable prior notice, it will permit any representative of the Lender, during the Borrower's normal business hours, and in a manner that does not unreasonably interfere with the Borrower's normal operations, to examine all the books of account, records, reports and other papers of the Borrower, to make copies and extracts therefrom, to cause such books to be audited by Independent certified public accountants, and to discuss the Borrower's affairs, finances and accounts with the Borrower's officers, employees, and Independent certified public accountants, all at such reasonable times, in such reasonable manner, and as often as may be reasonably requested. The Lender shall and shall cause its representatives, its legal counsel and its auditors to hold in confidence all such information except to the extent disclosure may be required by law (and all reasonable applications for confidential treatment are unavailing) and except to the extent that the Lender may reasonably determine that such disclosure is consistent with its obligations hereunder and under applicable law. Notwithstanding anything to the contrary contained herein, all parties to which this Agreement relates may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such parties relating to such tax treatment and tax structure. For purposes of this paragraph, the terms "tax treatment" and "tax structure" have the meaning given to such terms under Treasury Regulation section 1.6011-4(c).

Section 9.17. No Advisory of Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Transaction Document) are an arm's-length commercial transaction between the Borrower, on the one hand, and the Lender, on the other hand, and Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Transaction Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the Lender is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person; (iii) the Lender has not assumed nor will it assume an advisory, agency or fiduciary responsibility in favor of the Borrower or its Affiliates with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Transaction Document (irrespective of whether Lender has advised or is currently advising Borrower or any of its Affiliates on other matters) and Lender does not have any obligation to Borrower

or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Transaction Documents; (iv) Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower and its Affiliates, and Lender does not have any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Lender has not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Transaction Document) and Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against Lender with respect to any breach or alleged breach of agency or fiduciary duty.

Section 9.18. US Patriot Act Notice.

Lender hereby notifies the Borrower that pursuant to the requirements of the US Patriot Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the US Patriot Act. In addition, Lender shall have the right to periodically conduct due diligence (including, without limitation, in respect of information and documentation as may reasonably be requested by the Lender from time to time for purposes of compliance by the Lender with applicable laws (including, without limitation, the US Patriot Act and other "know your customer" and Anti-Money Laundering Laws), and any policy or procedure implemented by the Lender to comply therewith) on Borrower, its senior management and key principals and legal and beneficial owners. Borrower agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Lender shall constitute Credit Party Expenses hereunder and be for the account of Borrower.

Section 9.19. Foreign Asset Control Regulations.

Neither of the advance of the Term Loan nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the US Patriot Act. Furthermore, none of the Borrower or its Affiliates (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person" or in any manner violative of any such order.

Section 9.20. Time of the Essence.

Time is of the essence of the Transaction Documents.

Section 9.21. Additional Waivers.

(a) To the fullest extent permitted by applicable law, the obligations of Borrower shall not be affected by (i) the failure of Lender to assert any claim or demand or to enforce or exercise any right or remedy against Borrower under the provisions of this Agreement, any other Transaction Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms

or provisions of, this Agreement or any other Transaction Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Lender.

(b) The obligations of Borrower shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of the Obligations), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of Borrower hereunder shall not be discharged or impaired or otherwise affected by the failure of the Lender to assert any claim or demand or to enforce any remedy under this Agreement, any other Transaction Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of Borrower or that would otherwise operate as a discharge of any Borrower as a matter of law or equity (other than the payment in full in cash of all the Obligations).

The Lender may, at its election, foreclose on any security held by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with Borrower, or exercise any other right or remedy available to it against Borrower, without affecting or impairing in any way the liability of Borrower hereunder except to the extent that all the Obligations have been paid in full in cash. Borrower waives any defense arising out of any such election.

Section 9.22. Press Release.

(a) Borrower agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Lender or its Affiliates or referring to this Agreement or the other Borrower Documents without at least two (2) Business Days' prior notice to, and consultation with, the Lender unless (and only to the extent that) Borrower or Affiliate is required to do so under applicable law; provided that prior written consent of, or consultation with, the Lender shall not be required in connection with filings with the U.S. Securities and Exchange Commission by the Borrower or any of its Affiliates.

(b) Lender agrees that neither it nor its representatives shall publish any advertising material, including any "tombstone," press release or comparable advertising, on its website or in other marketing materials of Lender, relating to the financing transactions contemplated by this Agreement using Borrower's name, product photographs, logo, trademark or other insignia without at least two (2) Business Days' prior notice to, and consultation with, the Borrower. The Lender shall provide a draft reasonably in advance (not to be less than two (2) Business Days' prior to the publication thereof) of any advertising material, "tomb stone" or press release to the Borrower for review and comment prior to the publication thereof. Notwithstanding the foregoing, the Lender reserves the right to provide to industry trade organizations and loan syndication and pricing reporting services information necessary and customary for inclusion in league table measurements.

IN WITNESS WHEREOF, the Borrower and the Lender have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

OMX TIMBER FINANCE INVESTMENTS I, LLC, a Delaware limited liability company

By:
Name:
Title:

IN WITNESS WHEREOF, the Borrower and the Lender have caused their names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

WELLS FARGO BANK, NATIONAL ASSOCIATION, As Lender

By:
Name:
Title:

Exhibit 10.2

SECURITY AGREEMENT

by

OMX TIMBER FINANCE INVESTMENTS I, LLC
as Grantor

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Lender

Dated as of September 27, 2019

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SCHEDULE I Filings, Registrations and Recordings

SECURITY AGREEMENT

SECURITY AGREEMENT dated as of September 27, 2019 (as amended, restated, supplemented or otherwise modified from time to time, this "Security Agreement") made by OMX TIMBER FINANCE INVESTMENTS I, LLC, a Delaware limited liability company having an office at 6600 North Military Trail, Boca Raton, FL 33496, as (the "Grantor"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, having an office at One Boston Place, Boston, Massachusetts 02108, as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Lender").

R E C I T A L S:

A. The Grantor and Lender have, in connection with the execution and delivery of this Security Agreement, entered into that certain Term Loan Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Term Loan Agreement").

B. The Grantor will receive substantial benefits from the execution, delivery and performance of the Obligations and is, therefore, willing to enter into this Security Agreement.

C. This Security Agreement is given by the Grantor in favor of the Lender to secure the payment and performance of all of the Secured Obligations (as hereinafter defined).

D. It is a condition to the obligation of the Lender to make the Term Loan under the Term Loan Agreement that the Grantor execute and deliver the applicable Borrower Documents, including this Security Agreement.

A G R E M E N T:

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and the Lender hereby agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions.

(a)Unless otherwise defined herein or in the Term Loan Agreement, capitalized terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC.

(b)Capitalized terms used but not otherwise defined herein that are defined in the Term Loan Agreement shall have the meanings given to them in the Term Loan Agreement.

(c)The following terms shall have the following meanings:

"Claims" shall mean any and all property taxes and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed upon or assessed against, and all claims (including, without limitation, landlords', carriers', mechanics', workmen's, repairmen's, laborers',

materialmen's, suppliers' and warehousemen's Liens and other claims arising by operation of law) against, all or any portion of the Collateral.

"Collateral" shall have the meaning assigned to such term in SECTION 2.1 hereof.

"Grantor" shall have the meaning assigned to such term in the Preamble hereof.

"Lender" shall have the meaning assigned to such term in the Preamble hereof.

"Secured Obligations" shall mean the Obligations (as defined in the Term Loan Agreement).

"Security Agreement" shall have the meaning assigned to such in the Preamble hereof.

"Term Loan Agreement" shall have the meaning assigned to such term in Recital A hereof.

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

SECTION 1.2 Interpretation. The rules of construction specified in Section 1.02 of the Term Loan Agreement shall be applicable to this Security Agreement.

ARTICLE II

GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1 Pledge; Grant of Security Interest. As collateral security for the payment and performance in full of all the Secured Obligations, the Grantor hereby pledges and grants to the Lender, a lien on and security interest in and to all of the right, title and interest of the Grantor in, to and under (i) the Installment Notes and the Guaranty, and (ii) all present and future claims, demands and causes of action in respect of any or all of the foregoing and all payments on or under and all proceeds of every kind and nature whatsoever in respect of any or all of the foregoing, including all proceeds of the conversion, voluntary or involuntary, into cash or other liquid property, rights to payment of any and every kind and other forms of obligations and receivables, instruments and other property which at any time constitute all or part of or are included in the proceeds of any of the foregoing.

SECTION 2.2 Secured Obligations. This Security Agreement secures, and the Collateral is collateral security for, the payment and performance in full when due of the Secured Obligations.

SECTION 2.3 Security Interest.

(a)The Grantor hereby irrevocably authorizes the Lender at any time and from time to time to authenticate and file in any relevant jurisdiction any financing statements and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral.

(b)The Grantor hereby ratifies its prior authorization for the Lender to file in any relevant jurisdiction any financing statements or amendments thereto relating to the Collateral if filed prior to the date hereof.

ARTICLE III

PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF COLLATERAL

SECTION 3.1 Delivery of Installment Notes. The Grantor represents and warrants that the Installment Notes will be delivered to the Lender on the Effective Date in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank and that the Lender will have a perfected first priority security interest therein upon such delivery. Commencing from and including the Effective Date, the Lender shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or otherwise transfer to or to register in the name of the Lender or any of its nominees or endorse for negotiation any of the Installment Notes, without any indication that such Installment Notes are subject to the security interest hereunder.

SECTION 3.2 Financing Statements and Other Filings; Maintenance of Perfected Security Interest. The Grantor represents and warrants that the only filings, registrations and recordings necessary and appropriate to create, preserve, protect, publish notice of and perfect the security interest granted by the Grantor to the Lender pursuant to this Security Agreement in respect of the Collateral are listed on Schedule I hereto. The Grantor represents and warrants that all such filings, registrations and recordings have been delivered to the Lender in completed and, to the extent necessary or appropriate, duly executed form for filing in each governmental, municipal or other office specified in Schedule I. The Grantor agrees that at the sole cost and expense of the Grantor, (i) the Grantor will maintain the security interest created by this Security Agreement in the Collateral as a perfected first priority security interest and shall defend such security interest against the claims and demands of all Persons (other than with respect to Permitted Liens), (ii) the Grantor shall furnish to the Lender from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Lender may reasonably request, all in reasonable detail and (iii) at any time and from time to time, upon the written request of the Lender, the Grantor shall promptly and duly execute and deliver, and file and have recorded, such further instruments and documents and take such further action as the Lender may reasonably request, including the filing of any financing statements, continuation statements and other documents (including this Security Agreement) under the UCC (or other applicable laws) in effect in any jurisdiction with respect to the security interest created hereby, all in form reasonably satisfactory to the Lender, wherever required by applicable law in each case to perfect, continue and maintain a valid, enforceable, first priority security interest in the Collateral as provided herein and to preserve the other rights and interests granted to the Lender hereunder, as against the Grantor and third parties (other than with respect to Permitted Liens), with respect to the Collateral.

SECTION 3.3 Supplements; Further Assurances. The Grantor shall take such further actions, and execute and deliver to the Lender such additional assignments, agreements, supplements,

powers and instruments, as the Lender may in its reasonable judgment deem necessary or appropriate, wherever required by law, in order to perfect, preserve and protect the security interest in the Collateral as provided herein and the rights and interests granted to the Lender hereunder, to carry into effect the purposes hereof or better to assure and confirm unto the Lender or permit the Lender to exercise and enforce its rights, powers and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, the Grantor shall make, execute, endorse, acknowledge, file or refile and/or deliver to the Lender from time to time upon reasonable request such lists, descriptions and designations of the Collateral, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments. If an Event of Default has occurred and is continuing, the Lender may institute and maintain, in its own name or in the name of the Grantor, such suits and proceedings as the Lender may be advised by counsel shall be necessary or expedient to prevent any impairment of the security interest in or the perfection thereof in the Collateral. All of the foregoing shall be at the sole cost and expense of the Grantor. The Grantor and the Lender acknowledge that this Security Agreement is intended to grant to the Lender a security interest in and Lien upon the Collateral and shall not constitute or create a present assignment of any of the Collateral.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

In addition to, and without limitation of, each of the representations, warranties and covenants set forth in the Term Loan Agreement and the other Borrower Documents, the Grantor represents, warrants and covenants as follows:

SECTION 4.1 Title. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Lender pursuant to this Security Agreement (other than with respect to Permitted Liens). No Person other than the Lender will have control or possession of all or any part of the Collateral from and after the Effective Date.

SECTION 4.2 Limitation on Liens; Defense of Claims; Transferability of Collateral. The Grantor is as of the date hereof, the sole direct and beneficial owner of all Collateral pledged by it hereunder free from any Lien or other right, title or interest of any Person other than the Liens and security interest created by this Security Agreement and Permitted Liens. The Grantor shall, at its own cost and expense, defend title to the Collateral pledged by it hereunder and the security interest therein and Lien thereon granted to the Lender and the priority thereof against all claims and demands of all Persons, at its own cost and expense, at any time claiming any interest therein adverse to the Lender other than Permitted Liens. There is no agreement, and no Grantor shall enter into any agreement or take any other action, that would restrict the transferability of any of the Collateral or otherwise impair or conflict with the Grantor's obligations or the rights of the Lender hereunder (subject to Permitted Liens), other than, solely from the period between the Closing Date and the Effective Date, the Existing Debt as in effect prior to the Closing Date.

SECTION 4.3 Chief Executive Office; Change of Name; Jurisdiction of Organization.

(a)The exact legal name, type of organization, jurisdiction of organization, federal taxpayer identification number, organizational identification number and chief executive office of the Grantor is indicated next to its name on Schedule 3.20(a) to the Term Loan Agreement. The

Grantor shall furnish to the Lender prompt written notice of any change in (i) its corporate name, (ii) the location of its chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (iii) its identity or type of organization or corporate structure, (iv) its federal taxpayer identification number or organizational identification number or (v) its jurisdiction of organization (in each case, including, without limitation, by merging with or into any other entity, reorganizing, dissolving, liquidating, reincorporating or incorporating in any other jurisdiction). The Grantor agrees (A) not to effect or permit any such change unless it has delivered to the Lender all documents that that are required in order for the Lender to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral (subject to, with respect to priority, Permitted Liens having priority by operation of law) and (B) to take all action reasonably satisfactory to the Lender to maintain the perfection and priority of the security interest of the Lender in the Collateral intended to be granted hereunder. The Grantor agrees to promptly provide the Lender with certified Organization Documents reflecting any of the changes described in the preceding sentence to the extent applicable.

(b)The Lender may rely on opinions of counsel as to whether any or all UCC financing statements of the Grantor need to be amended as a result of any of the changes described in SECTION 4.3. If the Grantor fails to provide information to the Lender about such changes on a timely basis, the Lender shall not be liable or responsible to any party for any failure to maintain a perfected security interest in the Grantor's property constituting Collateral, for which the Lender needed to have information relating to such changes. The Lender shall have no duty to inquire about such changes if the Grantor does not inform the Lender of such changes, the parties acknowledging and agreeing that it would not be feasible or practical for the Lender to search for information on such changes if such information is not provided by the Grantor.

SECTION 4.4 No Conflicts, Consents, etc. No consent of any party (including, without limitation, equity holders or creditors of the Grantor) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required (A) for the grant of the security interest by the Grantor of the Collateral pledged by it pursuant to this Security Agreement or for the execution, delivery or performance hereof by the Grantor, (B) for the exercise by the Lender of the rights provided for in this Security Agreement or (C) for the exercise by the Lender of the remedies in respect of the Collateral pursuant to this Security Agreement except, in each case, for such consents which have been obtained prior to the date hereof, except to the extent that the failure to obtain such consent, authorization, approval, license or other action of any Person or any Governmental Authority could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect. Following the occurrence and during the continuation of an Event of Default, if the Lender desires to exercise any remedies or attorney-in-fact powers set forth in this Security Agreement and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Lender, the Grantor agrees to use commercially reasonable efforts to assist and aid the Lender to obtain as soon as commercially practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers.

SECTION 4.5 Collateral. All information set forth herein, including the schedules annexed hereto, and all information contained in any documents, schedules and lists heretofore delivered to the Lender in connection with this Security Agreement, in each case, relating to the Collateral, is accurate and complete in all material respects.

SECTION 4.6 Payment of Taxes; Compliance with laws; Contested Liens; Claims. The Grantor represents and warrants that all Claims imposed upon or assessed against the Collateral have been

paid and discharged except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (c) no Lien has been filed with respect thereto and (d) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. The Grantor shall comply with all applicable law relating to the Collateral. The Grantor may at its own expense contest the validity, amount or applicability of any Claims so long as the contest thereof shall be conducted in accordance with, and permitted pursuant to the provisions of, the Term Loan Agreement. Notwithstanding the foregoing provisions of this SECTION 4.6, no contest of any such obligation may be pursued by the Grantor if such contest would expose the Lender to (i) any possible criminal liability or (ii) any additional civil liability for failure to comply with such obligations unless the Grantor shall have furnished a bond or other security therefor satisfactory to the Lender.

SECTION 4.7 Access to Collateral, Books and Records; Other Information. Without limitation or duplication of the provisions of the Term Loan Agreement, upon reasonable prior request to the Grantor, the Lender, its agents, accountants and attorneys shall have full and free access to visit and inspect, as applicable, during normal business hours, all of the Collateral including, without limitation, all of the books, correspondence and records of the Grantor relating thereto. The Lender and its representatives may examine the same, take extracts therefrom and make photocopies thereof, except with respect to any matters that are confidential or that would, in the opinion of counsel, violate attorney-client privilege, and the Grantor agrees to render to the Lender, at the Grantor's cost and expense, such clerical and other assistance as may be reasonably requested by the Lender with regard thereto. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, no more than one (1) such inspection or examination shall be conducted at the expense of the Borrower during the term of this Security Agreement. The Grantor shall, at any and all times, within a reasonable time after written request by the Lender, furnish or cause to be furnished to the Lender, in such manner and in such detail as may be reasonably requested by the Lender, additional information with respect to the Collateral.

ARTICLE V

REMEDIES

SECTION 5.1 Remedies. Commencing from and including the Effective Date, upon the occurrence and during the continuance of any Event of Default, the Lender may, from time to time in respect of the Collateral, in addition to the other rights and remedies provided for herein, under applicable law or otherwise available to it:

(a)Personally, or by agents or attorneys, immediately take possession of the Collateral or any part thereof, from the Grantor or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon the Grantor's premises where any of the Collateral is located, remove such Collateral, remain present at such premises for a reasonable period in order to receive copies of all communications and remittances relating to the Collateral and while on such premises, use in connection with such removal and possession any and all services, supplies, aids and other facilities of the Grantor;

(b)Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Collateral including, without limitation, instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Lender, and in connection with any of the foregoing, compromise, settle, extend the time for

payment and make other modifications with respect thereto; provided, however, that in the event that any such payments are made directly to the Grantor, prior to receipt by any such obligor of such instruction, the Grantor shall segregate all amounts received pursuant thereto in trust for the benefit of the Lender and shall promptly pay such amounts to the Lender;

(c)Sell, assign, grant a license to use or otherwise liquidate, or direct the Grantor to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(d)Take possession of the Collateral or any part thereof, by directing the Grantor in writing to deliver the same to the Lender at any place or places so designated by the Lender;

(e)Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of the Grantor constituting Collateral for application to the Secured Obligations as provided in SECTION 5.5 hereof;

(f)Exercise any and all rights as beneficial and legal owner of the Collateral, including, without limitation, perfecting assignment of and exercising any and all rights and powers with respect to any Collateral; and

(g)Exercise all the rights and remedies of a secured party under the UCC, and the Lender may also in its sole discretion, without notice except as specified in SECTION 5.2 hereof, sell, assign or grant a license to use the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Lender's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Lender may deem commercially reasonable. The Lender or any of its Affiliates may be the purchaser, licensee, assignee or recipient of any or all of the Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such Person as a credit on account of the purchase price of any Collateral payable by such Person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of the Grantor, and the Grantor hereby waives, to the fullest extent permitted by law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. To the fullest extent permitted by law, the Grantor hereby waives any claims against the Lender arising by reason of the fact that the price at which any Collateral may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Lender accepts the first offer received and does not offer such Collateral to more than one offeree.

SECTION 5.2 Notice of Sale. The Grantor acknowledges and agrees that, to the extent notice of sale or other disposition of Collateral shall be required by applicable law and unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event the Lender shall provide the Grantor such advance notice as may be practicable under the circumstances), ten (10) days' prior notice to the Grantor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be

commercially reasonable notification of such matters. No notification need be given to the Grantor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying (as permitted under law) any right to notification of sale or other intended disposition.

SECTION 5.3 Waiver of Notice and Claims. The Grantor hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with the Lender's taking possession or the Lender's disposition of any of the Collateral, including, without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which the Grantor would otherwise have under law, and the Grantor hereby further waives, to the fullest extent permitted by applicable law: (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Lender's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law. The Lender shall not be liable for any incorrect or improper payment made pursuant to this Article V in the absence of gross negligence or willful misconduct. Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Grantor therein and thereto, and shall be a perpetual bar both at law and in equity against the Grantor and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through or under the Grantor.

SECTION 5.4 No Waiver; Cumulative Remedies.

(a)No failure on the part of the Lender to exercise, no course of dealing with respect to, and no delay on the part of the Lender in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy; nor shall the Lender be required to look first to, enforce or exhaust any other security, collateral or guaranties. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

(b)In the event that the Lender shall have instituted any proceeding to enforce any right, power or remedy under this Security Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Lender, then and in every such case, each of the Grantor and the Lender shall be restored to its former position and rights hereunder with respect to the Collateral, and all rights, remedies and powers of the Lender shall continue as if no such proceeding had been instituted.

SECTION 5.5 Application of Proceeds. The proceeds received by the Lender in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Lender of its remedies shall be applied, together with any other sums then held by the Lender pursuant to this Security Agreement, in accordance with and as set forth in Section 8.02 of the Term Loan Agreement.

ARTICLE VI

MISCELLANEOUS

SECTION 6.1 Concerning Lender.

(a)The Lender shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Collateral), in accordance with this Security Agreement and the Term Loan Agreement. The Lender may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact.

(b)The Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equivalent to that which the Lender, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that the Lender shall not have responsibility for, without limitation taking any necessary steps to preserve rights against any Person with respect to any Collateral.

(c)The Lender shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and, with respect to all matters pertaining to this Security Agreement and its duties hereunder, upon advice of counsel selected by it.

(d)If any item of Collateral also constitutes collateral granted to Lender under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, Lender, in its sole discretion, shall select which provision or provisions shall control.

SECTION 6.2 Lender May Perform; Lender Appointed Attorney-in-Fact. If the Grantor shall fail to perform any covenants contained in this Security Agreement or in the Term Loan Agreement or if any warranty on the part of the Grantor contained herein shall be breached, the Lender may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that Lender shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which the Grantor fails to pay or perform as and when required hereby. Any and all amounts so expended by the Lender shall be paid by the Grantor in accordance with the provisions of SECTION 6.3 hereof. Neither the provisions of this SECTION 6.2 nor any action taken by Lender pursuant to the provisions of this SECTION 6.2 shall prevent any such failure to observe any covenant contained in this Security Agreement nor any breach of warranty from constituting an Event of Default. The Grantor hereby appoints the Lender its attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor, or otherwise, from time to time after the occurrence and during the continuation of an Event of Default in the Lender's discretion to take any action and to execute any instrument consistent with the terms of the Term Loan Agreement and the other Borrower Documents which the Lender may deem necessary to accomplish the purposes hereof; provided that any such action directly affecting the Collateral may only be taken by such attorney from and including the Effective Date. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 6.3 Expenses. The Grantor will upon demand pay to the Lender the amount of any and all amounts required to be paid pursuant to Section 6.05 of the Term Loan Agreement.

SECTION 6.4 Continuing Security Interest; Assignment. This Agreement shall create a continuing security interest in the Collateral and shall (i) be binding upon the Grantor, its successors and

assigns, and (ii) inure, together with the rights and remedies of the Lender hereunder, to the benefit of the Lender and its successors, transferees and assigns. No other Persons (including, without limitation, any other creditor of the Grantor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), the Lender may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other Person in accordance with Section 9.08 of the Term Loan Agreement, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Lender, herein or otherwise, subject, however, to the provisions of the Term Loan Agreement.

SECTION 6.5 Termination; Release.

(a)This Security Agreement, the Lien in favor of the Lender and all other security interests granted hereby shall terminate with respect to all Secured Obligations when (i) the Term Loan Commitment shall have expired or been terminated and (ii) the principal of and interest on the Term Loan and all fees and other Secured Obligations shall have been paid in full (as such term is construed in Section 1.02(b) of the Credit Agreement).

(b)The Collateral shall be released from the Lien of this Security Agreement in accordance with the provisions of the Term Loan Agreement. Upon termination hereof or any release of Collateral in accordance with the provisions of the Term Loan Agreement, the Lender shall, upon the request and at the sole cost and expense of the Grantor, assign, transfer and deliver to the Grantor, against receipt and without recourse to or warranty by the Lender, such of the Collateral to be released (in the case of a release) or all of the Collateral (in the case of termination of this Security Agreement) as may be in possession of the Lender and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Collateral, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Collateral, as the case may be.

(c)At any time that the Grantor desires that the Lender take any action described in clause (b) of this SECTION 6.5, the Grantor shall, upon request of the Lender, deliver to the Lender an officer's certificate certifying that the release of the respective Collateral is permitted pursuant to clause (a) or (b) of this SECTION 6.5.

SECTION 6.6 Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Grantor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Term Loan Agreement and unless in writing and signed by the Lender and the Grantor. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by the Grantor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Security Agreement or any other document evidencing the Secured Obligations, no notice to or demand on the Grantor in any case shall entitle the Grantor to any other or further notice or demand in similar or other circumstances.

SECTION 6.7 Notices. Unless otherwise provided herein or in the Term Loan Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Term Loan Agreement, as to the Grantor, addressed to it at the address of the Borrower set forth in the Term Loan Agreement and as to the Lender, addressed to it at its address set forth in the Term Loan Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other parties hereto complying as to delivery with the terms of this SECTION 6.7.

SECTION 6.8 GOVERNING LAW. THIS SECURITY AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

SECTION 6.9 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT

SECTION 6.10 Severability of Provisions. Any provision hereof 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 hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 6.11 Execution in Counterparts; Effectiveness. This Security Agreement may be executed in any number of counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Security Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Security Agreement.

SECTION 6.12 No Release. Nothing set forth in this Security Agreement shall relieve the Grantor from the performance of any term, covenant, condition or agreement on the Grantor's part to be performed or observed under or in respect of any of the Collateral or from any liability to any Person under or in respect of any of the Collateral or shall impose any obligation on the Lender to perform or observe any such term, covenant, condition or agreement on the Grantor's part to be so performed or observed or shall impose any liability on the Lender for any act or omission on the part of the Grantor relating thereto or for any breach of any representation or warranty on the part of the Grantor contained in this Security Agreement, the Term Loan Agreement or the other Borrower Documents, or under or in respect of the Collateral or made in connection herewith or therewith. The obligations of the Grantor contained in this SECTION 6.12 shall survive the termination hereof and the discharge of the Grantor's other obligations under this Security Agreement, the Term Loan Agreement and the other Borrower Documents.

SECTION 6.13 Obligations Absolute. All obligations of the Grantor hereunder shall be absolute and unconditional irrespective of:

(a)any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Grantor;

(b)any lack of validity or enforceability of the Term Loan Agreement or any other Transaction Document, or any other agreement or instrument relating thereto;

(c)any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Term Loan Agreement or any other Transaction Document or any other agreement or instrument relating thereto;

(d)any pledge, exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(e)any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, the Term Loan Agreement or any other Transaction Document except as specifically set forth in a waiver granted pursuant to the provisions of SECTION 6.6 hereof; or

(f)any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Grantor (other than the termination of this Security Agreement in accordance with SECTION 6.5(a) hereof).

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IN WITNESS WHEREOF, the Grantor and the Lender have caused this Security Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

OMX TIMBER FINANCE INVESTMENTS I, LLC, as Grantor

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Lender

By: _____
Name:
Title: _____

SCHEDULE I

Filings, Registrations and Recordings

Type of Filing	Grantor	Jurisdiction for UCC filing
UCC	OMX Timber Finance Investments I, LLC	Delaware

35071772

Exhibit 31.1

Rule 13a-14(a)/15d-14(a) Certification

I, Gerry P. Smith, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Office Depot, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Gerry P. Smith

Name: Gerry P. Smith
Title: Chief Executive Officer (principal executive officer)
Date: November 6, 2019

Exhibit 31.2

Rule 13a-14(a)/15d-14(a) Certification

I, Joseph T. Lower, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Office Depot, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Joseph T. Lower

Name: Joseph T. Lower
Title: Executive Vice President and Chief Financial Officer
(principal financial officer)
Date: November 6, 2019

Exhibit 32

Office Depot, Inc.

Certification of CEO and CFO Pursuant to
18 U.S.C. Section 1350, as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report on Form 10-Q (the "Report") of Office Depot, Inc. (the "Company") for the quarter ended September 28, 2019, as filed with the U.S. Securities and Exchange Commission on the date hereof, Gerry P. Smith, as Chief Executive Officer of the Company, and Joseph T. Lower, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to each officer's knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Gerry P. Smith
Name: Gerry P. Smith
Title: Chief Executive Officer (principal executive officer)
Date: November 6, 2019

/s/ Joseph T. Lower
Name: Joseph T. Lower
Title: Chief Financial Officer (principal financial officer)
Date: November 6, 2019

The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 1350 of Title 18 of the United States Code and, accordingly, is not being filed with the U.S. Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).