

## **Appendix B: Required Covenants in Loan Documentation**

Each participating Eligible Lender should use its own documentation for Main Street loans. Such documentation should be substantially similar, including with respect to required covenants, to the loan documents that the Eligible Lender uses in its ordinary course lending to similarly situated borrowers, adjusted only as appropriate to reflect the requirements of the Program. Appendix A sets out the components that must be reflected in such documentation. Model covenants are provided below in relation to #8, #12, #13, and #15 of Appendix A.

*Please note:* Eligible Lenders are not required to use the model covenants provided; these are provided only as examples for the convenience of Eligible Lenders. Eligible Lenders are permitted to use variations of such provisions to the extent they serve the same substantive purpose and are otherwise substantially similar to provisions that the Eligible Lender uses in its ordinary course lending to similarly situated borrowers.

### **I. Priority and Security Covenant**

Each Main Street facility includes a requirement concerning the priority and/or security of the loan, which must be reflected in the loan documentation through the presence or absence of certain covenants.

#### **I.A. MSNLF Loans**

MSNLF Loans must not be, at the time of origination or at any time during the term of the MSNLF Loan, contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments. See question [B.3](#) for more information about how to interpret this term. In accordance with this term, the loan documentation should not include any provisions that would cause the MSNLF Loan to be contractually subordinated to any other debt whether in or outside of bankruptcy. For the avoidance of doubt, prohibitions on contractual subordination do not prevent the incurrence of obligations that have mandatory priority under the Bankruptcy Code or other insolvency laws, or other relevant law or regulation, that apply to entities generally.

#### **I.B. MSPLF Loans and MSELF Upsized Tranches that are Part of Bilateral Facilities**

MSPLF Loans and MSELF Upsized Tranches must be, at the time of origination and at all times thereafter, senior to or pari passu with, in terms of priority and security, the Eligible Borrower's other Loans or Debt Instruments (other than Mortgage Debt). See questions [C.6](#) and [D.12](#) for more information about how to interpret these terms in the context of the MSPLF and MSELF, respectively.

In accordance with this term, the loan documentation for MSPLF Loans and MSELF Upsized Tranches that are part of bilateral facilities (i.e., where the Eligible Lender is the only lender)

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should not include any provisions that would cause the MSPLF Loan or MSELF Upsized Tranche to be contractually subordinated to any other debt whether in or outside of bankruptcy. See section I.A of this Appendix B for more information.

In addition, the loan documentation for MSPLF Loans and MSELF Upsized Tranches that are part of bilateral facilities must contain a lien covenant or negative pledge that is of the type – and that contains exceptions, limitations, carve-outs, baskets, materiality thresholds, and qualifiers – that is consistent with those used by the Eligible Lender in its ordinary course lending to similarly situated borrowers. A model lien covenant is set out below for the convenience of Eligible Lenders.

*In the “Negative Covenants” section:*

“The Borrower will not, nor will it permit any subsidiary to, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, securing any debt for borrowed money or any obligations evidenced by a bond, debenture, note, loan agreement or other similar instrument, or any guarantee of the foregoing, other than the following:

- (a) Liens securing obligations under the [MSPLF Loan][MSELF loan];
- (b) [Liens on real property in connection with loans with respect to which substantially all of the proceeds were used for acquisition, construction, fit-out, and/or renovation of the property];
- (c) [Junior Liens securing permitted Indebtedness]; or
- (d) [Liens on receivables assets and related assets incurred in connection with a receivables facility, provided that such debt is secured only by the newly acquired property].

Lien covenants included in Main Street loan documentation may include carve-outs at the discretion of the Eligible Lender in accordance with its customary underwriting practices with respect to similarly situated borrowers. The carve-outs from the lien covenant listed above illustrate the types of carve outs, among others, that Eligible Lenders may choose to include in a Main Street loan’s lien covenant.

### **I.C. MSELF Upsized Tranches that are Part of Multi-Lender Facilities**

MSELF Upsized Tranches must be, at the time of origination and at all times thereafter, senior to or pari passu with, in terms of priority and security, the Eligible Borrower’s other Loans or Debt Instruments (other than Mortgage Debt). See question [D.12](#) for more information about how to interpret this term.

In accordance with this term, the loan documentation for MSELF Upsized Tranches that are part of multi-lender facilities (i.e., where there are multiple lenders) should not include any provisions that would cause the MSELF Upsized Tranche to be contractually subordinated to

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any other debt whether in or outside of bankruptcy. See section I.A of this Appendix B for more information.

For MSELF Upsized Tranches that are part of multi-lender facilities, the facility must include a provision like the one described in section I.B of this Appendix B, unless the loan documentation has a lien covenant that was negotiated in good faith prior to April 24, 2020.

## **II. Borrower Certifications and Covenants Material Breach Mandatory Prepayment Provision**

Each participating borrower must submit signed Borrower Certifications and Covenants in connection with the Main Street Loan. If the Board determines that the borrower made a material misstatement in certifications, or materially breached covenants, relating to CARES Act, the Federal Reserve Act, or the Board’s Regulation A, the Board will notify the Eligible Lender to trigger a mandatory prepayment requirement under the Main Street loan. To implement these measures, the Borrower Certifications and Covenants should be referenced in loan documents for Main Street loans as set out below.

### **II.A. MSNLF Loans, MSPLF Loans, and MSELF Upsized Tranches that are Part of Bilateral Facilities**

For all MSNLF Loans, MSPLF Loans, and MSELF Upsized Tranches that are part of a bilateral facility, the loan documents must contain a mandatory prepayment provision related to a material breach of the Eligible Borrower certifications in Section 2 (CARES Act Borrower Eligibility Certifications and Covenants) and Section 3 (FRA and Regulation A Borrower Eligibility Certifications) of the Borrower Certifications and Covenants. A model provision is set out below for convenience.

*In the “Mandatory Prepayment” section:*

“If, on any date (such date, a “Trigger Date”), the Board of Governors of the Federal Reserve System or a designee thereof has, after consultation with [the Administrative Agent][the Eligible Lender], notified [the Administrative Agent][the Eligible Lender] in writing that the Borrower has materially breached, made a material misrepresentation with respect to or otherwise failed to comply with certifications in Section 2 (CARES Act Borrower Eligibility Certifications and Covenants) or Section 3 (FRA and Regulation A Borrower Eligibility Certifications) of the Borrower Certifications and Covenants in any material respect or that any such certification has failed to be true and correct in any material respect, then [the Administrative Agent][the Eligible Lender] shall promptly so notify the Borrower and the Borrower shall, no later than two (2) Business Days after such Trigger Date, prepay the [Eligible Loan] in full, along with any accrued and unpaid interest thereon.”

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## II.B. MSELF Upsized Tranches that are Part of Multi-Lender Facilities

For MSELF Upsized Tranches that are part of multi-lender facilities, a mandatory prepayment provision substantially similar to the model mandatory prepayment provision set out in section II.A of this Appendix B must be included if the percentage (or number) of lenders required to consent to a new mandatory prepayment provision under the existing agreements (typically a simple majority) consents to any other changes to the loan documents in the process of upsizing the loan or selling the participation to the Main Street SPV. Further, if 100% of the lenders agree to any other changes to the loan documents in the process of upsizing the loan or selling the participation to the Main Street SPV, this mandatory prepayment provision must be inserted into the loan documents and treated as a “sacred right,” the amendment, waiver, or modification of which would require 100% lender consent.

## III. Cross-Acceleration Provision

Each Main Street loan should contain a cross-acceleration provision that would trigger an event of default under the Main Street loan if a different loan extended to the Eligible Borrower by the Eligible Lender or the Eligible Lender’s commonly controlled affiliate is accelerated.

### III.A. MSNLF Loans, MSPLF Loans, and MSELF Upsized Tranches that are Part of Bilateral Facilities

For all MSNLF Loans, MSPLF Loans, and MSELF Upsized Tranches that are part of a bilateral facility, the loan documents must contain a cross-acceleration provision that would be triggered if other debt owed by the Eligible Borrower to the Eligible Lender or any commonly controlled affiliate of the Eligible Lender is accelerated. A model provision is set out below for the convenience of Eligible Lenders.

*In the “Event of Default” section:*

“(i) [the Borrower or any Subsidiary shall fail to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness under the Loan Documents) owing to the [ELIGIBLE LENDER] or any commonly controlled Affiliate of the [ELIGIBLE LENDER], in each case beyond the applicable grace period with respect thereto, if any; or (ii) the Borrower or any Subsidiary shall fail to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which failure to make a payment, default or other event described in cause (i) or (ii) is to cause such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; provided that clause (ii) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is

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permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness is repaid when required under the documents providing for such Indebtedness;”

### III.B. MSELF Upsized Tranches that are Part of Multi-Lender Facilities

For MSELF Upsized Tranches that are part of multi-lender facilities, the facility must include a provision like the one described in section III.A of this Appendix B, unless the loan documentation has a cross-default or cross-acceleration provision that was negotiated in good faith prior to April 24, 2020.

## IV. Financial Reporting Covenant

Each Main Street loan should contain a financial reporting covenant requiring the regular delivery of certain financial information and calculations.

### IV.A. MSNLF Loans, MSPLF Loans, and MSELF Upsized Tranches that are Part of Bilateral Facilities

For MSNLF Loans, MSPLF Loans, and MSELF Upsized Tranches that are part of a bilateral facility, the loan documents must contain a financial reporting covenant requiring the quarterly delivery of Borrower financial information and calculations set out in Appendix C. A model covenant is set out below for the convenience of Eligible Lenders.

*In the “Affirmative Covenants” section:*

“as soon as available, but in any event within [60] days after the end of each fiscal quarter of the Borrower, the Borrower shall deliver to the [Administrative Agent] [Eligible Lender] financial reporting in a form and substance reasonably acceptable to the [Administrative Agent] [Eligible Lender] setting forth the financial information, and where applicable reasonably detailed calculations of the required data, set forth in [See Appendix C to these FAQs] as at the end of such fiscal quarter of the Borrower, which financial reporting and calculations, in each case, shall be true and accurate in all material respects and, where applicable, present fairly in all material respects the financial condition of the Borrower for the period covered thereby in accordance with GAAP, consistently applied.”

### IV.B. MSELF Upsized Tranches that are Part of Multi-Lender Facilities

For MSELF Upsized Tranches that are part of multi-lender facilities, the facility must include a provision like the one described in section IV.A of this Appendix B, unless the loan documentation has a financial reporting covenant that was negotiated in good faith prior to April 24, 2020.