

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

**FORM 8-K**

**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported): August 14, 2020**

**ShotSpotter, Inc.**

(Exact name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-38107**

(Commission File Number)

**47-0949915**  
(IRS Employer  
Identification No.)

**7979 Gateway Blvd., Suite 210**  
**Newark, California**  
(Address of Principal Executive Offices)

**94560**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (510) 794-3100**

**Not Applicable**

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

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

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

| Title of each class                       | Trading Symbol(s) | Name of each exchange on which registered |
|---|-------------------|---|
| Common stock, par value \$0.005 per share | SSTI              | The Nasdaq Capital Market                 |

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

Emerging growth company

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

**Item 1.01 Entry into a Material Definitive Agreement**

As previously reported, on September 27, 2018, ShotSpotter, Inc. (the “Company”) entered into a Credit Agreement with Umpqua Bank (the “Credit Agreement”), which allows the Company to borrow up to \$10.0 million under a revolving loan facility , which was amended by a First Amendment to Credit Agreement on May 21, 2019 (as so amended, the “Credit Agreement”).

On August 14, 2020, the Company and Umpqua Bank entered into a Second Amendment to Credit Agreement (the “Second Amendment”) to amend certain terms of the Credit Agreement to, among other things, increase the size of the revolving loan facility from \$10.0 million to \$20.0 million and remove the borrowing base component of the revolving loan facility, as well as extending the maturity of the revolving loan facility from September 27, 2020 to September 27, 2022. The Second Amendment also removed the financial covenant relating to the amount of unrestricted cash and cash equivalents that the Company is required to maintain at all times and set a floor of 1.00% to the definition of the LIBOR Rate and Daily LIBOR Rate.

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

The information contained in Item 1.01 above is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

| <u>Exhibit Number</u> | <u>Description</u>  |
|-----------------------|---|
| 10.1                  | <a href="#"><u>Second Amendment to Credit Agreement by and between ShotSpotter, Inc. and Umpqua Bank, dated August 14, 2020</u></a> |
| 104                   | Cover Page Interactive Data File (embedded within the Inline XBRL document)   |

**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.

**ShotSpotter, Inc.**

Date: August 19, 2020

By: \_\_\_\_\_  
/s/ Ralph A. Clark  
**Ralph A. Clark**  
**President and Chief Executive Officer**

## SECOND AMENDMENT TO CREDIT AGREEMENT

THIS SECOND AMENDMENT TO CREDIT AGREEMENT (the "Amendment"), dated as of August 14, 2020, is made by and between SHOTSPOTTER, INC., a Delaware corporation (the "Borrower") and UMPQUA BANK, an Oregon state-chartered bank (the "Lender").

## WITNESSETH:

WHEREAS, the Borrower and the Lender are parties to that certain Credit Agreement dated as of September 27, 2018 (the "Original Credit Agreement"), as amended by that certain First Amendment to Credit Agreement dated as of May 21, 2019 (the Original Loan Agreement, as so amended, the "Credit Agreement").

WHEREAS, the Borrower has requested that the Lender make certain modifications to the Credit Agreement as more fully set forth herein, and the Lender is willing to do so upon and subject to the terms and conditions of this Amendment.

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants and agreements hereinafter set forth and intending to be legally bound hereby, covenant and agree as follows:

1. Recitals. The Recitals set forth above are true and correct and are incorporated herein.
2. Definitions. Except as set forth in this Amendment, defined terms used herein shall have the meanings given to them in the Credit Agreement.
3. Amendments to Defined Terms in Section 1.1 [Certain Definitions] of the Credit Agreement.
  - (a) The definition of "Daily LIBOR Rate" is hereby amended by deleting all references to "zero (0.00)" and replacing them with "one percent (1.00%)".
  - (b) The definition of "Expiration Date" is hereby amended by deleting the reference to "September 27, 2020" and replacing it with "September 27, 2022."
  - (c) The definition of "LIBOR Rate" is hereby amended by deleting all references to "zero (0.00)" and replacing them with "one percent (1.00%)".
4. Amendment to Remove Annual Loan Fee. Section 2.3 of the Credit Agreement [Loan Fee] is hereby amended by deleting "and on or before each anniversary thereof,".
5. Amendment to Remove Liquidity Covenants.

(a) Section 8.2.15 of the Credit Agreement [Minimum Liquidity] is hereby deleted in its entirety and replaced with the following "[Intentionally Omitted]."

(b) Exhibit 8.3.4 to the Credit Agreement is hereby deleted in its entirety and replaced with Exhibit A attached hereto.

6. Amendment to Increase Revolving Credit Commitment. The references to "\$10,000,000" in each of the following are hereby deleted and replaced with "\$20,000,000":

(a) The title page of the Credit Agreement;

(b) Page 1 of the Credit Agreement; and

(c) Schedule 1.1(B) of the Credit Agreement.

7. Amendment to Remove Borrowing Base.

(a) The definition of Borrowing Base in Section 1.1 [Certain Defined Terms] is hereby deleted in its entirety.

(b) Section 2.1.1 [Revolving Credit Loans] of the Credit Agreement is hereby amended as follows: (i) the references in subsection (i) of the first full sentence to "the lesser of (A)" and "and (B) the Borrowing Base minus outstanding Letter of Credit Obligations" are hereby deleted; and (ii) the references in subsection (ii) of the first full sentence to "the lesser of (A)" and "or (B) the Borrowing Base" are hereby deleted.

(c) Section 2.4 [Termination or Reduction of Revolving Credit Commitments] is hereby amended as follows: (i) the references in the first full sentence to "the lesser of (A)" and "or (B) the Borrowing Base" are hereby deleted; and (ii) the references in the second full sentence to "the lesser of (A)" and "or (B) the Borrowing Base" are hereby deleted.

(d) Section 2.9.1.1 of the Credit Agreement is hereby amended by deleting the references to "the lesser of (A)" and "or (B) the Borrowing Base" in subsection (ii) thereof.

(e) Section 5.4.1 [Borrowing Base Exceeded] of the Credit Agreement is hereby deleted in its entirety and replaced with "[Intentionally Omitted]."

(f) Section 8.3.4.6(ii) [Borrowing Base Certificates] is hereby deleted in its entirety and replaced with "[Intentionally Omitted]."

(g) The reference to "Exhibit 8.3.4.6 – BORROWING BASE CERTIFICATE" is hereby deleted from the List of Schedules and Exhibits, and Exhibit 8.3.4.6 to the Credit Agreement is hereby deleted in its entirety.

8. Amendment to Address Foreign Subsidiaries.

(a) Section 8.2.9 is hereby amended by adding "Except with respect to Excluded Subsidiaries," at the beginning of the first sentence.

(c) Schedule 6.1.2 to the Credit Agreement is hereby deleted in its entirety and replaced with Exhibit B attached hereto.

9. Conditions Precedent. The Borrower and the Lender acknowledge and agree that the waiver and amendments set forth herein shall only be effective upon the occurrence of all the following conditions precedent (which date shall be the "Second Amendment Effective Date"):

(a) Amendment. The Borrower and the Lender shall have executed and delivered this Amendment.

(b) Amended and Restated Note. To evidence the increase to the Revolving Credit Commitment set forth above, the Borrower shall have executed and delivered to Lender an Amended and Restated Revolving Credit Note in substantially the same form, *mutatis mutandis*, as the Note delivered by the Borrower in favor of Lender on the Closing Date.

(c) Miscellaneous. Such other documents, agreements, instruments, deliverables and items set forth on the closing checklist delivered in connection with this Amendment or as otherwise deemed necessary by the Lender.

10. Representations, Warranties and Covenants. The Borrower covenants and agrees with and represents and warrants to the Lender as follows:

(a) the Borrower's obligations under the Credit Agreement, as modified hereby, are and shall remain secured by the Collateral, pursuant to the terms of the Credit Agreement and the other Loan Documents;

(b) the Borrower possesses all of the powers requisite for it to enter into and carry out the transactions referred to herein and to execute, enter into and perform the terms and conditions of this Amendment, the Credit Agreement and the other Loan Documents and any other documents contemplated herein that are to be performed by the Borrower; any and all actions required or necessary pursuant to the Borrower's organizational documents or otherwise have been taken to authorize the due execution, delivery and performance by the Borrower of the terms and conditions of this Amendment; the officers of the Borrower executing this Amendment are the duly elected, qualified, acting and incumbent officers of the Borrower and hold the titles set forth below their names on the signature lines of this Amendment; and such execution, delivery and performance will not conflict with, constitute a default under or result in a breach of any applicable law or any agreement, instrument, order, writ, judgment, injunction or decree to which the Borrower is a party or by which the Borrower or any of its properties is bound, and that all consents, authorizations and/or approvals required or necessary from any third parties in connection with the entry into, delivery and performance by the Borrower of the terms and conditions of this Amendment, the Credit Agreement, the other Loan Documents and the transactions contemplated hereby have been obtained by the Borrower and are full force and effect;

(c) this Amendment, the Credit Agreement, and the other Loan Documents constitute the valid and legally binding obligations of the Borrower, enforceable against the Borrower in

accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and by general equitable principles, whether enforcement is sought by proceedings at law or in equity;

(d) all representations and warranties made by the Borrower in the Credit Agreement and the other Loan Documents are true and correct in all material respects (or in the case of any such representation and warranty that is qualified by materiality or reference to Material Adverse Effect, in all respects) as of the date hereof, except to the extent that any such representation and warranty relates to a specific date, in which case such representation and warranty shall be true and correct in all material respects (or in the case of any such representation and warranty that is qualified by materiality or reference to Material Adverse Effect, in all respects) as of such earlier date, with the same force and effect as if all such representations and warranties were fully set forth herein and made as of the date hereof and the Borrower has complied with all covenants and undertakings in the Credit Agreement and the other Loan Documents;

(e) no Event of Default or Default (other than the Existing Event of Default) has occurred and is continuing under the Credit Agreement or the other Loan Documents; there exist no defenses, offsets, counterclaims or other claims with respect to the Borrower's obligations and liabilities under the Credit Agreement or any of the other Loan Documents; and

(f) the Borrower hereby ratifies and confirms in full its duties and obligations under the Credit Agreement and the other Loan Documents applicable to it, each as modified hereby.

11. Incorporation into Credit Agreement and other Loan Documents. This Amendment shall be incorporated into the Credit Agreement by this reference and each reference to the Credit Agreement that is made in the Credit Agreement or any other document executed or to be executed in connection therewith shall hereafter be construed as a reference to the Credit Agreement as amended hereby. The term "Loan Documents" as defined in the Credit Agreement shall include this Amendment.

12. Severability. If any one or more of the provisions contained in this Amendment, the Credit Agreement, or the other Loan Documents shall be held invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained in this Amendment, the Credit Agreement or the other Loan Documents shall not in any way be affected or impaired thereby, and this Amendment shall otherwise remain in full force and effect.

13. Successors and Assigns. This Amendment shall apply to and be binding upon the Borrower in all respects and shall inure to the benefit of the Lender and its successors and assigns, provided that the Borrower may not assign, transfer or delegate its duties and obligations hereunder. Nothing expressed or referred to in this Amendment is intended or shall be construed to give any person or entity other than the parties hereto a legal or equitable right, remedy or claim under or with respect to this Amendment, the Credit Agreement or any of the other Loan Documents, it being the intention of the parties hereto that this Amendment and all of its provisions and conditions are for the sole and exclusive benefit of the Borrower and the Lender.

14. Reimbursement of Expenses. The Borrower unconditionally agrees to pay and reimburse the Lender and save the Lender harmless against liability for the payment of reasonable out-of-pocket costs, expenses and disbursements, including without limitation, fees and expenses of counsel incurred by the Lender in connection with the development, preparation, execution, administration, interpretation or performance of this Amendment and all other documents or instruments to be delivered in connection herewith.

15. Counterparts. This Amendment may be executed by different parties hereto in any number of separate counterparts, each of which, when so executed and delivered shall be an original and all such counterparts shall together constitute one and the same instrument.

16. Entire Agreement. This Amendment sets forth the entire agreement and understanding of the parties with respect to the transactions contemplated hereby and supersedes all prior understandings and agreements, whether written or oral, between the parties hereto relating to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by any party which is not embodied in this Amendment, and no party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not set forth herein.

17. Headings. The various headings of this Amendment are inserted for convenience only and shall not affect the meaning or interpretation of this Amendment or any provisions hereof.

18. Construction. The rules of construction set forth in Section 1.2 [Construction] of the Credit Agreement shall apply to this Amendment.

19. Governing Law. This Amendment shall be deemed to be a contract under the laws of the State of California and for all purposes shall be governed by and construed and enforced in accordance with the internal laws of the State of California without regard to its conflict of laws principles.

20. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT, THE CREDIT AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

21. Judicial Reference. In any judicial action or cause of action arising from this Amendment or otherwise, including without limitation contract and tort disputes, all decisions of



fact and law shall, at the request of either party, be referred to a referee in accordance with Section 638 et seq. of the California Code of Civil Procedure if the action is before a court of any judicial district of the State of California. The referee shall prepare written findings of fact and conclusions of law, and judgment upon the referee's award shall be entered in court in which such proceeding was commenced. No provision or exercise of any right under this provision shall limit the right of the undersigned or Lender or other holder of this Amendment to exercise self-help remedies, such as foreclosure against or sale of any real or personal property collateral or security, or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, during or after the pendency of any judicial reference proceeding. The exercise of a remedy does not waive the right of either party to resort to judicial reference. The parties further agree that all disputes, claims and controversies between them shall be brought in their individual capacities and not as a plaintiff or class member in any purported class or representative proceeding.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

**[SIGNATURE PAGE TO SECOND AMENDMENT TO CREDIT AGREEMENT]**

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

**BORROWER:**

**SHOTSPOTTER, INC**, a Delaware corporation

By: \_\_\_\_\_/s/ Alan R. Stewart\_\_\_\_\_

Name: Alan R. Stewart

Its: CFO

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**[SIGNATURE PAGE TO SECOND AMENDMENT TO CREDIT AGREEMENT]**

**LENDER:**

**UMPQUA BANK**, an Oregon state-chartered bank

By: /s/ Jason Antrim  
Name: Jason Antrim  
Title: Managing Director

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**EXHIBIT A**

**FORM OF  
QUARTERLY COMPLIANCE CERTIFICATE**

This certificate is delivered pursuant to **Section 8.3.3** of that certain Credit Agreement dated September 27, 2018, as amended by that certain First Amendment to Credit Agreement dated May 21, 2019, as amended by that certain Second Amendment to Credit Agreement dated \_\_\_\_\_, 2020 (collectively, and as the same may be further amended, restated or modified from time-to-time, the "**Credit Agreement**"), by and among ShotSpotter, Inc., a Delaware corporation (the "**Borrower**") and Umpqua Bank, an Oregon state-chartered bank (the "**Lender**"). Unless otherwise defined herein, terms defined in the Credit Agreement are used herein with the same meanings.

The undersigned officer, \_\_\_\_\_, the \_\_\_\_\_ [*President/Chief Executive Officer/Chief Financial Officer/Corporate Controller/Treasurer*] of the Borrower, in such capacity does hereby certify on behalf of the Borrower as of the quarter/year ended \_\_\_\_\_, 20\_\_ (the "**Report Date**"), as follows:<sup>1</sup>

A. Maximum Consolidated Modified Leverage Ratio (Section 8.2.14). As of the Report Date, the Consolidated Modified Leverage Ratio of the Loan Parties is \_\_\_\_\_, which ratio is not greater than 3.50 to 1.00. A detailed calculation of the Consolidated Modified Leverage Ratio in a form approved by the Lender is attached hereto as Schedule I.

B. [Intentionally Omitted].

C. Minimum Interest Coverage Ratio (Section 8.2.16). As of the Report Date, the Consolidated Interest Coverage Ratio of the Loan Parties is \_\_\_\_\_, which ratio is not less than 2.00 to 1.00. A detailed calculation of the Consolidated Interest Charge Ratio in a form approved by the Lender is attached hereto as Schedule III.

D. Minimum Profitability (Section 8.2.17). So long as Section 8.2.17 remains in full force and effect pursuant to the terms thereof, as of the Report Date, the net profit after taxes of the Loan Parties is \_\_\_\_\_ for the trailing four consecutive quarterly period, which amount shall be at least \$1.00 (commencing with the fiscal quarter ended December 31, 2019). As of the Report Date, if applicable, the quarterly net loss after taxes is \$\_\_\_\_\_, which amount shall not exceed \$500,000. A detailed calculation of the Minimum Profitability covenant in a form approved by the Lender is attached hereto as Schedule IV.

E. Representations, Warranties and Covenants. As of the date hereof: (i) all of the representations and warranties of the Loan Parties contained in Section 6 of the Credit Agreement and in the other Loan Documents are true and correct in all material respects,

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<sup>1</sup> See Credit Agreement for full provisions relating to all financial covenants.

except for representations and warranties made as of a specified date (which were true and correct in all material respects, except as otherwise qualified, as of such date).

F.Event of Default. No Event of Default exists as of the date hereof.

[SIGNATURE PAGE FOLLOWS]

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**SIGNATURE PAGE – FORM OF QUARTERLY COMPLIANCE CERTIFICATE**

IN WITNESS WHEREOF, the undersigned has executed this Certificate this \_\_ day of \_\_\_\_\_, 202\_.

**BORROWER:**

**SHOTSPOTTER, INC.**, a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**EXHIBIT 8.3.3**

**FORM OF QUARTERLY COMPLIANCE CERTIFICATE – SCHEDULES I - IV**

**SCHEDULE I – Section 8.2.14 (Maximum Consolidated Modified Leverage Ratio)**

**A. CONSOLIDATED FUNDED INDEBTEDNESS**

1. Outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder excluding those described in clauses (ii), (iii) and (iv) of the definition of “Obligations” hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments. \$ \_\_\_\_\_
  2. All purchase money Indebtedness. \$ \_\_\_\_\_
  3. The maximum amount available to be drawn under issued and outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments. \$ \_\_\_\_\_
  4. All obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business). \$ \_\_\_\_\_
  5. All Attributable Indebtedness. \$ \_\_\_\_\_
  6. All obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Expiration Date in respect of any Equity Interests or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends. \$ \_\_\_\_\_
  7. Without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (1) through (6) above of Persons other than the Borrower or any Subsidiary. \$ \_\_\_\_\_
  8. All Indebtedness of the types referred to in clauses (1) through (7) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary. \$ \_\_\_\_\_
  9. Consolidated Funded Indebtedness equals sum of A1 through A8. \$ \_\_\_\_\_
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**B. CONSOLIDATED EBITDA**

- 1. Consolidated Net Income for the most recently completed 12 trailing months. \$ \_\_\_\_\_
- 2. Consolidated Interest Charges for such period. \$ \_\_\_\_\_
- 3. Provision for federal, state, local and foreign income taxes payable for such period. \$ \_\_\_\_\_
- 4. Depreciation and amortization expenses for such period. \$ \_\_\_\_\_
- 5. Non-cash stock compensation expense. \$ \_\_\_\_\_
- 6. Non-recurring assets impairment expense in an amount not to exceed \$250,000. \$ \_\_\_\_\_
- 7. Non-recurring loss on debt extinguishment. \$ \_\_\_\_\_
- 8. Non-cash warrant revaluation. \$ \_\_\_\_\_
- 9. Fees, costs and expenses payable in connection with any financing activities. \$ \_\_\_\_\_
- 10. Fees, costs and expenses relating to any Permitted Acquisition. \$ \_\_\_\_\_
- 11. Other non-cash charges and losses (excluding any such non-cash charges or losses to the extent (A) there were cash charges with respect to such charges and losses in past accounting periods or (B) there is a reasonable expectation that there will be cash charges with respect to such charges and losses in future accounting periods less (c) without duplication and to the extent reflected as a gain or otherwise included in the calculation of consolidated net income for such period (i) non-cash gains (excluding any such non-cash gains to the extent (A) there were cash gains with respect to such gains in past accounting periods or (B) there is a reasonable expectation that there will be cash gains with respect to such gains in future accounting periods). \$ \_\_\_\_\_
- 12. Consolidated EBITDA equals sum of B1 through B11.<sup>2</sup> \$ \_\_\_\_\_

**C. Section 8.2.1.4 - Maximum Consolidated Modified Leverage Ratio**

- 1. Consolidated Funded Indebtedness (from Item A9 above). \$ \_\_\_\_\_
- 2. Any unsecured convertible notes permitted under Section 8.2.1 as of such date. \$ \_\_\_\_\_
- 3. Remainder of C1 minus C2. \$ \_\_\_\_\_
- 4. Consolidated EBITDA (from Item B12 above). \$ \_\_\_\_\_
- 5. Ratio of (8) to (9). \_\_\_\_\_ to 1.00

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<sup>2</sup> See Credit Agreement for historical Consolidated EBITDA amounts to be included for certain computation periods.

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6. Maximum Permitted.

3.50 to 1.00

**SCHEDULE II – [Intentionally Omitted]**

**SCHEDULE III – Section 8.2.16 (Minimum Interest Coverage Ratio)**

**A. CONSOLIDATED INTEREST CHARGES**

1. All interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money and Attributable Indebtedness (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP. \$ \_\_\_\_\_
2. All interest paid or payable with respect to discontinued operations. \$ \_\_\_\_\_
3. The portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower and its Subsidiaries on a consolidated basis for the most recently completed fiscal quarter or fiscal year, as the case may be. \$ \_\_\_\_\_
4. Consolidated Interest Charges equals sum of A1 through A3.

**B. Section 8.2.16 – Minimum Interest Coverage Ratio**

1. Consolidated EBITDA (from Item IB12 above). \$ \_\_\_\_\_
  2. Consolidated Interest Charges (from item A4 above). \$ \_\_\_\_\_
  3. Ratio of (1) to (2). \_\_\_\_\_ to 1.00
  4. Minimum Allowed. 2.00 to 1.00
-

**SCHEDULE IV – Section 8.2.17 (Minimum Profitability) <sup>3</sup>**

Net profit after taxes for such trailing four consecutive quarter period \$ \_\_\_\_\_  
commencing with fiscal quarter ended December 31,  
2019.

Minimum required \$1.00

Commencing with the fiscal quarter ended December 31, 2018, no  
single quarterly net loss after taxes may exceed \$500,000

If applicable quarterly net loss after taxes \$ \_\_\_\_\_

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<sup>3</sup> This covenant shall no longer be in force or effect after Borrower issues convertible indebtedness permitted under the Credit Agreement in an amount equal to at least \$50,000,000 in the aggregate commencing the fiscal quarter of such issuance

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**EXHIBIT B**

**SUBSIDIARIES**

**None**