

**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): December 27, 2024

BRC Inc.

(Exact name of registrant as specified in charter)

Delaware
(State or other jurisdiction of incorporation)

001-41275
(Commission File Number)

87-3277812
(IRS Employer Identification No.)

1144 S. 500 W
Salt Lake City, UT 84101
(Address of principal executive offices, including Zip Code)
(801) 874-1189
(Registrant's telephone number, including area code)

N/A

(Former name or former address, if changed since last report)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock, \$0.0001 par value	BRCC	New York Stock Exchange

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

Emerging growth company

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

Item 1.01. Entry Into a Material Definitive Agreement.

On December 27, 2024 (the “Closing Date”), Authentic Brands LLC (“Authentic Brands”), a subsidiary of BRC Inc. (the “Company”), amended its ABL Credit Agreement (as defined below) with its existing lender to lower interest rates, revise financial covenants, and adjust collateral priorities. Additionally, it replaced its prior term loan by entering into a \$40 million Term Loan Facility (as defined below), maturing in December 2029, with an optional \$20 million expansion available under specified conditions. The agreements include leverage and liquidity requirements, structured repayment schedules, and restrictions on certain financial activities. Proceeds were used to retire existing debt, cover transaction costs, and support corporate operations. These changes aim to enhance financial flexibility and reduce borrowing costs.

Entry Into Credit Agreements and Financing Updates

On the Closing Date, Authentic Brands and certain subsidiaries of Authentic Brands entered into (i) that certain third amendment to credit agreement (the “ABL Credit Amendment”) with PNC Bank, National Association, as administrative agent and collateral agent (“PNC”), and the lenders from time to time party thereto, pursuant to which the lenders thereunder agreed to amend that certain Credit Agreement, dated as of August 10, 2023 (as amended previously and by the ABL Credit Amendment, the “ABL Credit Agreement”), by and among Authentic Brands, certain subsidiaries of Authentic Brands party thereto as “Borrowers” (collectively with Authentic Brands, the “ABL Borrowers”), and certain subsidiaries of Authentic Brands from time to time party thereto as “Guarantors” (the “ABL Guarantors”), the lenders party thereto and PNC, as administrative and collateral agent, and (ii) a Financing Agreement (the “Term Loan Financing Agreement” and together with the ABL Credit Agreement, the “Credit Agreements”), by and among Authentic Brands, certain subsidiaries of Authentic Brands party thereto as “Borrowers” (the “Term Loan Borrowers”), and certain subsidiaries of Authentic Brands from time to time party thereto as “Guarantors” (collectively with Authentic Brands, the “Term Loan Guarantors”), Blue Torch Finance LLC, as administrative agent and collateral agent, and the lenders from time to time party thereto, pursuant to which the lenders thereunder provided the Borrowers with senior secured term loans on the Closing Date in an aggregate principal amount of \$40 million (the “Term Loan Facility”). The Term Loan Facility also includes an uncommitted accordion feature pursuant to which, under certain circumstances, including a maximum pro forma total net leverage ratio, the Term Loan Borrowers may, with the agreement of the lenders providing any such incremental loans, add one or more tranches of additional term loans in an aggregate principal amount not to exceed \$20 million. The ABL Borrowers, the ABL Guarantors, the Term Loan Borrowers and the Term Loan Guarantors are referred to collectively herein as the “Credit Parties”.

The obligations under the ABL Credit Agreement are guaranteed by each ABL Borrower and each ABL Guarantor. The obligations under the ABL Credit Agreement are secured by a first priority lien on certain deposit accounts, cash and cash equivalents, credit card payments, accounts receivable, inventory and other related assets of the ABL Borrowers and the ABL Guarantors (the “ABL Priority Collateral”) and a second priority lien on substantially all of the other assets of the ABL Borrowers and the ABL Guarantors. The obligations under the Term Loan Credit Agreement are guaranteed by each Term Loan Borrower and each Term Loan Guarantor. The obligations under the Term Loan Credit Agreement are secured by a second priority lien on the ABL Priority Collateral and a first priority lien on substantially all of the other assets of the Term Loan Borrowers and the Term Loan Guarantors.

Each Credit Agreement includes certain conditions to borrowings, representations and warranties, affirmative and negative covenants, and events of default customary for financings of their type and size. Each Credit Agreement requires the Credit Parties to maintain (i) a total net leverage ratio; (ii) a fixed charge coverage ratio; and (iii) minimum liquidity. The Credit Agreements also limit the Credit Parties’ ability to, among other things, incur additional indebtedness, create liens on any assets, pay dividends or make certain restricted payments, make certain investments, consummate certain asset sales, make certain payments on indebtedness, and merge, consolidate or engage in other fundamental changes.

On the Closing Date, the Credit Parties used the proceeds from the Term Loan Facility and approximately \$12.8 million of borrowings under the ABL Facility (i) to retire the Credit Parties’ term loan credit facility with Whitehawk Capital Partners LP, (ii) to pay transaction fees, costs and expenses related to the Credit Agreements, and (iii) for other general corporate and working capital purposes.

ABL Credit Amendment

The ABL Credit Amendment amended the ABL Credit Agreement to, among other things, lower the block on the availability, revise and replace the financial covenants as described above and lower the interest rate accruing thereunder as described below.

Borrowings under the ABL Facility bear interest at a rate per annum of either (i) the Base Rate (as defined below) plus a margin ranging from 0.50% to 1.50% or (ii) term SOFR plus a margin ranging from 1.50% to 2.50%. "Base Rate" means, for any day, the base commercial lending rate of PNC as publicly announced to be in effect from time to time. The ABL Borrowers are also required to pay certain fees in connection with the ABL Credit Agreement, including an unused commitment fee based on the average daily unused portion of the ABL Facility, equal to 0.375% on an annual basis.

Term Loan Financing Agreement

The proceeds under the Term Loan Facility were used to replace the existing term loan facility of the Credit Facilities in order to, among other things, reduce the interest rate applicable to the term loan borrowings. Borrowings under the Term Loan Facility bear interest at a rate per annum equal to either (i) a reference rate plus a margin ranging from 5.00% to 5.50% based on a total net leverage ratio threshold or (ii) term SOFR plus a margin ranging from 6.00% to 6.50% based on a total net leverage ratio threshold. The reference rate and term SOFR rate are subject to floors of 3.50% and 2.50%, respectively.

The Term Loan Facility requires the Term Loan Borrowers to make quarterly principal repayments in an aggregate principal amount equal to (i) 0.625% of the original aggregate principal amount of the Term Loan commencing with the fiscal quarter ending March 31, 2025 through the first anniversary of the Closing Date, (ii) 1.25% of the original aggregate principal amount of the term loans extended thereunder commencing with the fiscal quarter ending after the first anniversary of the Closing Date through the maturity date of the Term Loan Facility. The Term Loan Facility is also subject to customary mandatory prepayment provisions, including payments of proceeds from asset dispositions, casualty events, extraordinary receipts and a percentage of excess cash flow. The Term Loan Borrowers may voluntarily prepay amounts outstanding under the Term Loan Facility at any time, subject in certain cases to a prepayment premium.

The Term Loan Facility is scheduled to mature on December 27, 2029.

The foregoing summaries of the ABL Credit Amendment and the Term Loan Financing Agreement do not purport to be complete and are subject to, and qualified in their entirety by, reference to the full text of the ABL Credit Amendment, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference, and the full text of the Term Loan Financing Agreement, a copy of which is filed as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

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

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibits **Description**

[10.1](#) Third Amendment to Credit Agreement, dated as of December 27, 2024, by and among Authentic Brands LLC, certain subsidiaries of Authentic Brands LLC party thereto, the lenders party thereto from time to time and PNC Bank, National Association, as administrative and collateral agent

[10.2](#) Financing Agreement, dated as of December 27, 2024, by and among Authentic Brands LLC, certain subsidiaries of Authentic Brands LLC party thereto, the lenders party thereto from time to time and Blue Torch Finance LLC, as administrative and collateral agent

SIGNATURE

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

Dated: December 31, 2024

BRC INC.

By: /s/ Stephen Kadenacy
Name: Stephen Kadenacy
Title: Chief Financial Officer

THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of December 27, 2024, is entered into among AUTHENTIC BRANDS LLC, a Delaware limited liability company ("Parent"), BLACK RIFLE COFFEE COMPANY LLC, a Delaware limited liability company ("BRCC"), GOOD BEANS LLC, a Delaware limited liability company ("Good Beans"), FREE RANGE AMERICAN MEDIA COMPANY LLC, a Delaware limited liability company ("Free Range"), SIGNAL MOUNTAIN MEDIA WORKS LLC, a Texas limited liability company ("Signal Mountain"), 1144 SLC LLC, a Delaware limited liability company ("1144 SLC"), BRCC OPERATING COMPANY LLC, a Delaware limited liability company ("BRCC Operating"), SPENCER 355 LLC, a Delaware limited liability company ("Spencer 355"), 621 MANCHESTER LLC, a Delaware limited liability company ("621 Manchester"), BRCC GC LLC, a Utah limited liability company ("BRCC GC"), GROUNDS AND HOUNDS COFFEE COMPANY LLC, a Delaware limited liability company ("Grounds and Hounds"), INDEPENDENT COFFEE SOLUTIONS LLC, a Delaware limited liability company ("Independent Coffee"), and BRCC COPPERFIELD LLC, a Delaware limited liability company ("BRCC Copperfield"), together with Parent, BRCC, Good Beans, Free Range, Signal Mountain, 1144 SLC, BRCC Operating, Spencer 355, 621 Manchester, BRCC GC, Grounds and Hounds, and Independent Coffee, collectively, the "Borrowers" and each individually a "Borrower", the Lenders party hereto, and PNC BANK, NATIONAL ASSOCIATION ("PNC"), in its capacity as administrative agent for the Lenders (PNC in such capacity, together with its successors and permitted assigns, the "Agent"). Terms used herein without definition shall have the respective meanings ascribed to them in the Credit Agreement defined below.

RECITALS

A. The Lenders, Agent and Borrowers have previously entered into that certain Credit Agreement, dated as of August 10, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), pursuant to which the Lenders have made certain loans and financial accommodations available to Borrowers.

B. The Borrowers have requested that Agent and the Lenders amend the Credit Agreement, and the Lenders and Agent are willing to do so on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Amendment of Credit Agreement. On the Effective Date (defined below),

(a) the Credit Agreement shall be amended as indicated on **Annex A** attached to this amendment, with text indicated as strikeouts and strikeouts representing text to be deleted from the Credit Agreement in each applicable provision of the Credit Agreement as shown on such **Annex A**, and with text indicated as **bold and double underlined** and **bold and double underlined** representing text to be added to the Credit Agreement in each applicable provision of the Credit Agreement as shown on such **Annex A**;

- (b) Exhibit F to the Credit Agreement shall be amended and restated as set forth on **Annex B** attached to this amendment; and
- (c) **Schedule A** to this Amendment is the Schedule A referred to in the definition of Third Amendment Dispositions in the Credit Agreement.

2. Effectiveness of this Amendment. This Amendment shall become effective on the date the following conditions are satisfied, each in form and substance acceptable to Agent (such date, the "Effective Date"):

- (a) Agent shall have received this Amendment duly executed and delivered by the Borrowers, the Lenders party hereto and Agent;
- (b) Agent shall have received a Borrowing Base Certificate (and all supporting reports as Agent may require) prepared as of the November 30, 2024;
- (c) Agent shall have received a payoff letter regarding all existing Debt of Credit Parties owing to Whitehawk Capital Partners, LP ("Whitehawk") and the lenders under in connection with that certain Credit Agreement, dated as of the Closing Date, by and among Borrowers, the other Credit Parties party thereto, the Lenders and Whitehawk, as Agent;
- (d) (i) All conditions precedent to the effectiveness of the Term Loan Credit Agreement and the other Term Loan Debt Documents (as applicable), on terms reasonably acceptable to Agent, shall have been satisfied or waived by the Term Loan Lenders in accordance with the Term Loan Credit Agreement, (ii) Term Loan Agent, on behalf of the Term Loan Lenders, shall have executed and delivered the Intercreditor Agreement, which shall be in form and substance reasonably satisfactory to Agent, (iii) Agent shall have received fully-executed copies of the Term Loan Debt Documents, the terms and conditions of which shall be reasonably acceptable to Agent, and (iv) Borrowers shall have received (or will receive concurrently with the funding of the Loans on the Closing Date) at least \$40,000,000 of gross proceeds of the Term Loan Debt funded by the Term Loan Lenders in accordance with the Term Loan Debt Documents;
- (e) no Default or Event of Default shall exist at the time of, or immediately result from, the consummation of this Amendment; and
- (f) the representations and warranties of each Credit Party in the Credit Agreement and the other Loan Documents shall be true and correct in all material respects on the date of, and after giving effect to, this Amendment (provided that any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to such qualification) in all respects on such effective date), except for those representations and warranties that expressly relate to an earlier date, in which case, they shall have been true and correct in all material respects as of such date.

3. Post-Closing Obligations. Credit Parties shall cause the conditions set forth below to be satisfied, on or before the date specified for each condition (or such later date as Administrative Agent may agree in its Permitted Discretion via email), time being of the essence, in a manner satisfactory, in form and substance as applicable, to Administrative Agent in its Permitted Discretion:

(a) Within thirty (30) days following the Effective Date, Credit Parties shall, with respect to any Deposit Accounts or Securities Accounts maintained by the Credit Parties at Regions Bank, deliver to Administrative Agent fully executed Article 9 Control Agreements for each such deposit or securities account.

4. Representations and Warranties. Each Credit Party represents and warrants as follows:

(a) Corporate and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of this Amendment (and the Credit Agreement, as amended hereby, to which it is a party), and the performance of its obligations hereunder (and under the Credit Agreement, as amended hereby), are within its corporate, company or partnership powers, have been duly authorized by all necessary corporate, company or partnership action, require no action by or in respect of, or filing with, any Governmental Authority and do not contravene, or constitute a default under, any provision of Applicable Laws or of its charter or bylaws or other constitutive documents or of any material agreement, or any judgment, injunction, order, decree or other instrument binding upon such Credit Party or result in the creation or imposition of any Lien on any asset of such Credit Party.

(b) Enforceability. This Amendment has been duly executed and delivered by each Credit Party. This Amendment, the Credit Agreement (as amended hereby) and each other Loan Document is the legal, valid and binding obligation of each applicable Credit Party that is a party hereto or thereto, enforceable against each such Credit Party in accordance with its terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally, and is in full force and effect against each such Credit Party.

(c) Representations and Warranties. The representations and warranties of each Credit Party in this Amendment and the other Loan Documents are true and correct in all material respects on the date of, and after giving effect to, this Amendment (provided that any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to such qualification) in all respects on such effective date), except for those representations and warranties that expressly relate to an earlier date, in which case, they shall have been true and correct in all material respects as of such date.

(d) No Default. No event has occurred and is continuing that constitutes a Default or an Event of Default as of the Effective Date.

5. Third Amendment Revolving Loan. On the date hereof, Borrowers have requested Lenders make to the Borrowers a Revolving Loan made as a Term SOFR Rate Loan in the aggregate principal amount of \$12,813,385.85 with an interest period of three months (the "Third Amendment Revolving Loan"). Borrowers hereby request that proceeds of the Third Amendment Revolving Loan in the amount of \$12,638,385.85 (the "Funding Proceeds") are not sent to Borrower but are instead delivered by Agent to Term Loan Agent in accordance with that certain funding side letter, dated as of the date hereof, by Term Loan Agent to Agent (the "Funding Letter"). The remaining proceeds of the Third Amendment Revolving Loan shall be delivered to Agent in accordance with the terms of the Fee Letter delivered to Agent on the date hereof. Borrowers hereby acknowledge and agree that delivery of the Funding Proceeds to Term Loan Agent and the payments made in accordance with the wire transfer instructions set forth on Exhibit A attached to the Funding Letter are made for administrative convenience and the legal effect thereof is the same as if the proceeds of the Third Amendment Revolving Loan were transferred from the Lenders to Borrowers. In the event the account numbers and/or wiring instructions are incorrect on Exhibit A attached to the Funding Letter, Borrower Representative and the other Borrowers hereby agree that they shall be jointly and severally liable for any and all losses, costs and expenses arising therefrom. Agent shall charge Borrowers' Account as a Revolving Loan for any expenses or fees relating to the foregoing in accordance with the terms of the Credit Agreement and the other Loan Documents.

6. GOVERNING LAW; Jurisdiction, Consent to Service of Process.

(a) THIS AMENDMENT AND ALL MATTERS RELATING HERETO OR ARISING HEREFROM (WHETHER ARISING UNDER CONTRACT LAW, TORT LAW OR OTHERWISE) SHALL, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(b) Sections 15.16 (Submission to Jurisdiction) and 15.17 (15.17 Waivers; Limitation on Damages; Limitation on Liability) of the Credit Agreement are hereby incorporated by reference, *mutatis mutandis*.

7. Counterparts; Facsimile Signatures. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which when taken together, shall constitute one and the same instrument. Delivery by one or more parties hereto of an executed counterpart of this Amendment via facsimile, telecopy or other electronic method of transmission pursuant to which the signature of such party can be seen or presumed sent (including Adobe Corporation's Portable Document Format or PDF) shall have the same force and effect as the delivery of an original manually executed counterpart of this Amendment or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

8. Reference to and Effect on the other Loan Documents.

(a) Upon and after the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to "the Credit Agreement", "thereof" or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified and amended hereby.

(b) Except as specifically amended above, the Credit Agreement and all other Loan Documents, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed and shall constitute the legal, valid, binding and enforceable obligations of the Credit Parties to Agent and the Lenders, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of Agent and/or the Lenders under the Credit Agreement or any of the other Loan Documents, nor constitute a waiver of any provision of the Credit Agreement or any of the other Loan Documents.

(d) To the extent that any terms and conditions in any of the other Loan Documents shall contradict or be in conflict with any terms or conditions of the Credit Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified or amended hereby.

9. Ratification. Each Credit Party hereby restates, ratifies and reaffirms each and every term and condition set forth in the Credit Agreement, as amended hereby, and the other Loan Documents effective as of the date hereof.

10. Integration. This Amendment, together with the Credit Agreement and the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

11. Severability. If any part of this Amendment is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

BORROWERS:

AUTHENTIC BRANDS LLC

By: /s/ Robert Lee
Name: Robert Lee
Title: Vice President, Finance

BLACK RIFLE COFFEE COMPANY LLC
GOOD BEANS LLC
BRCC GC LLC
FREE RANGE AMERICAN MEDIA COMPANY LLC
SIGNAL MOUNTAIN MEDIA WORKS LLC
1144 SLC LLC
BRCC OPERATING COMPANY LLC
SPENCER 355 LLC
621 MANCHESTER LLC
GROUNDS AND HOUNDS COFFEE COMPANY LLC
INDEPENDENT COFFEE SOLUTIONS LLC
BRCC COPPERFIELD LLC

By: /s/ Robert Lee
Name: Robert Lee
Title: Vice President, Finance

Signature Page to Third Amendment to Credit Agreement

AGENT AND LENDER:

PNC BANK, NATIONAL ASSOCIATION

By: /s/ Jeffrey A. Kessler
Name: Jeffrey A. Kessler
Title: Senior Vice President

Signature Page to Third Amendment to Credit Agreement

CREDIT AGREEMENT

by and among

AUTHENTIC BRANDS LLC

AND CERTAIN OF ITS SUBSIDIARIES,

JOINTLY AND SEVERALLY, as the “Borrowers”,

ANY OTHER CREDIT PARTIES PARTY HERETO FROM TIME TO TIME,

THE FINANCIAL INSTITUTIONS PARTY HERETO FROM TIME TO TIME, as the “Lenders”,

and

**PNC BANK, NATIONAL ASSOCIATION, as the “Administrative Agent” and “Collateral Agent”
August 10, 2023**

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1 DEFINITIONS; RULES OF CONSTRUCTION	1
1.1 Definitions	1
1.2 Accounting Terms	64
1.3 Uniform Commercial Code	65
1.4 Rules of Construction	65
1.5 Benchmark Replacement Notification	66
1.6 Conforming Changes Relating to Term SOFR Rate	67
SECTION 2 THE CREDIT FACILITIES	67
2.1 Revolving Commitment.	67
2.2 [Reserved].	70
2.3 Swing Line Loans; Settlement.	71
2.4 Letter of Credit Facility.	73
SECTION 3 INTEREST, FEES, AND CHARGES	78
3.1 Interest	78
3.2 Fees.	80
SECTION 4 LOAN ADMINISTRATION	83
4.1 Manner of Borrowing and Funding Revolving Loans	83
4.2 Defaulting Lender	84
4.3 Borrower Representative	87
4.4 One Obligation	87
4.5 Effect of Termination	87
4.6 Cash Collateral	88
SECTION 5 PAYMENTS	88
5.1 General Payment Provisions	88
5.2 Repayment of Revolving Loans	88
5.3 [Reserved]	90
5.4 Payment of Other Obligations	90
5.5 Post-Default Allocation of Payments	90
5.6 Sharing of Payments	92
5.7 Nature and Extent of each Borrower's Liability	93
SECTION 6 CONDITIONS PRECEDENT	96
6.1 Conditions Precedent to Initial Loans	96
6.2 Conditions Precedent to All Extensions of Credit	100
SECTION 7 REPRESENTATIONS AND WARRANTIES	101
7.1 Organization and Qualification	101
7.2 Power and Authority	101
7.3 Enforceability	101
7.4 Capital Structure	102
7.5 Title to Properties; Priority of Liens	102
7.6 Licenses and Permits	102
7.7 Real Estate	102

7.8 Casualties; Taking of Properties; etc.	103
7.9 Deposit Accounts; Securities Accounts; Commodity Accounts	103
7.10 Intellectual Property	104
7.11 Financial Statements; Projections	105
7.12 Accounts	106
7.13 Taxes	107
7.14 Insurance	107
7.15 Solvent; Fraudulent Transfer	107
7.16 Litigation	107
7.17 Material Contracts and Restrictive Agreements	108
7.18 Surety Obligations	108
7.19 Governmental Approvals	108
7.20 Brokers	108
7.21 Compliance with Laws	108
7.22 ERISA	108
7.23 Environmental Matters	109
7.24 Regulated Entity	110
7.25 Labor Relations and Related Matters	112
7.26 Relations with Vendors and Customers	112
7.27 Use of Proceeds	112
7.28 Accuracy and Completeness of Information	113
7.29 No Defaults	113
7.30 Senior Debt	113
SECTION 8 AFFIRMATIVE COVENANTS AND CONTINUING AGREEMENTS	113
8.1 Use of Proceeds	114
8.2 Maintenance of Existence and Rights; Conduct of Business	114
8.3 Insurance	114
8.4 Inspections; Appraisals	116
8.5 Adequate Books and Records	116
8.6 Borrowing Base Reporting; Financial and Other Information	117
8.7 Compliance with Laws	122
8.8 ERISA	122
8.9 Environmental	123
8.10 Margin Stock	124
8.11 Taxes; Claims	124
8.12 Receivables; Deposit Accounts and Securities Accounts	124
8.13 Covenants Regarding Collateral and Property	128
8.14 Future Subsidiaries	128
8.15 Further Assurances	129
8.16 Post-Closing Obligations	129
SECTION 9 NEGATIVE COVENANTS	131
9.1 Debt	131
9.2 Liens	134
9.3 Restricted Payments	136
9.4 Investments	137
9.5 Disposition of Assets	139
9.6 Restrictions on Payment of Certain Debt	139
9.7 Fundamental Changes	140
9.8 Restrictive Agreements; Certain Restrictions; Inconsistent Agreements	142

9.9 Affiliate Transactions	142
9.10 Plans	142
9.11 Sales and Leasebacks	143
9.12 Certain Agreements	143
9.13 Disqualified Equity Interests	143
9.14 Finance Insurance Premiums	143
9.15 Holdings	143
SECTION 10 FINANCIAL COVENANTS	144
10.1 Financial Covenants	144
SECTION 11 EVENTS OF DEFAULT; REMEDIES UPON DEFAULT	144
11.1 Events of Default	144
11.2 Remedies upon Default	147
11.3 License	148
11.4 Receiver	149
11.5 Deposits; Insurance	149
11.6 Remedies Cumulative	149
11.7 Borrowers' Right to Cure	149
SECTION 12 ADMINISTRATIVE AGENT	150
12.1 Appointment, Authority, and Duties of Administrative Agent; Professionals	150
12.2 Guarantors and Collateral; Intercreditor Agreements; and Field Examination Reports	152
12.3 Reliance By Administrative Agent	154
12.4 Action Upon Default	154
12.5 Indemnification of Administrative Agent Indemnitees	154
12.6 Limitation on Responsibilities of Administrative Agent	155
12.7 Resignation; Successor Administrative Agent	155
12.8 Separate Collateral Agent	156
12.9 Due Diligence and Non-Reliance	156
12.10 Remittance of Payments	157
12.11 Administrative Agent in its Individual Capacity	161
12.12 [Reserved]	161
12.13 Bank Product Providers	161
12.14 No Third Party Beneficiaries	162
12.15 Certifications From Lenders and Participants; PATRIOT Act; No Reliance	162
12.16 Bankruptcy	162
SECTION 13 ASSIGNMENTS AND PARTICIPATIONS	163
13.1 Successors and Assigns	163
SECTION 14 YIELD PROTECTION	167
14.1 Alternate Rate of Interest	167
14.2 Increased Costs	169
14.3 Taxes	171
14.4 Mitigation Obligations; Designation of a Different Lending Office	174
SECTION 15 MISCELLANEOUS	175
15.1 Notices	175
15.2 Amendments	177
15.3 Indemnity; Expenses	180

15.4 Reimbursement Obligations	181
15.5 Performance of Credit Parties' Obligations	181
15.6 Setoff	182
15.7 Independence of Covenants; Severability	182
15.8 Cumulative Effect; Conflict of Terms	182
15.9 Counterparts	182
15.10 Fax or Other Transmission	183
15.11 NOTICE OF FINAL AGREEMENT	183
15.12 Relationship with Lenders	183
15.13 No Advisory or Fiduciary Responsibility	183
15.14 Confidentiality; Credit Inquiries	184
15.15 Governing Law	184
15.16 Submission to Jurisdiction	185
15.17 Waivers; Limitation on Damages; Limitation on Liability	185
15.18 Limitation on Liability; Presumptions	187
15.19 PATRIOT Act Notice	187
15.20 Powers	187
15.21 No Tax Advice	187
15.22 Judgment Currency	187
15.23 Survival of Representations and Warranties, etc.	188
15.24 Revival and Reinstatement of Obligations	188
15.25 Acknowledgement of and Consent to Bail-In of Affected Financial Institutions	188
15.26 Certain ERISA Matters	188
15.27 [Reserved]	189
15.28 Section Headings	189
15.29 Qualified Financial Contracts	190
15.30 Term Loan Intercreditor Agreement	190

APPENDICES

Appendix A	Lenders, Commitments and Commitment Percentages
Appendix B	Notice Information

EXHIBITS

Exhibit A-1	Form of Revolving Note
Exhibit A-2	Form of Swing Line Note
Exhibit B	Form of Assignment Agreement
Exhibit C	Form of Notice of Borrowing
Exhibit D	Form of Notice of Conversion/Continuation
Exhibit E	Form of Borrowing Base Certificate
Exhibit F	Form of Compliance Certificate
Exhibit G	Form of Joinder Agreement
Exhibit H	Form of Secured Party Designation Notice
Exhibits I-1-I-4	Form(s) of U.S. Tax Compliance Certificates

SCHEDULES

Schedule I	Permitted Property Sale
Schedule 1.1	Scheduled Noteholder Debt
Schedule 7.4	Capital Structure
Schedule 7.7	Real Estate
Schedule 7.9	Deposit Accounts, Securities Accounts and Commodities Accounts
Schedule 7.10	Intellectual Property
Schedule 7.14	Insurance
Schedule 7.16	Litigation
Schedule 7.17	Material Contracts and Restrictive Agreements
Schedule 7.20	Brokers
Schedule 7.22	ERISA Plans
Schedule 7.23	Environmental Matters
Schedule 7.25	Labor Relations and Related Matters
Schedule 9.1	Existing Debt
Schedule 9.2	Existing Liens
Schedule 9.4	Existing Investments
Schedule 9.9	Affiliate Transactions

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement") dated as of August 10, 2023, is made by and among (A) AUTHENTIC BRANDS LLC, a Delaware limited liability company ("Parent"), BLACK RIFLE COFFEE COMPANY LLC, a Delaware limited liability company ("BRCC"), GOOD BEANS LLC, a Delaware limited liability company ("Good Beans"), FREE RANGE AMERICAN MEDIA COMPANY LLC, a Delaware limited liability company ("Free Range"), SIGNAL MOUNTAIN MEDIA WORKS LLC, a Texas limited liability company ("Signal Mountain"), 1144 SLC LLC, a Delaware limited liability company ("1144 SLC"), BRCC OPERATING COMPANY LLC, a Delaware limited liability company ("BRCC Operating"), SPENCER 355 LLC, a Delaware limited liability company ("Spencer 355"), 621 MANCHESTER LLC, a Delaware limited liability company ("621 Manchester"), BRCC GC LLC, a Utah limited liability company ("BRCC GC"), GROUNDS AND HOUNDS COFFEE COMPANY LLC, a Delaware limited liability company ("Grounds and Hounds"), INDEPENDENT COFFEE SOLUTIONS LLC, a Delaware limited liability company ("Independent Coffee"), and BRCC COPPERFIELD LLC, a Delaware limited liability company ("BRCC Copperfield"); (B) any other Subsidiaries of Parent that may become a Borrower hereunder pursuant to **Section 8.14** (each of such Subsidiaries, together with Parent, BRCC, Good Beans, Free Range, Signal Mountain, 1144 SLC, BRCC Operating, Spencer 355, 621 Manchester, BRCC GC, Grounds and Hounds, Independent Coffee and BRCC Copperfield, jointly and severally, "Borrowers" and, each, a "Borrower"); (C) any other Credit Parties party hereto from time to time; (D) the financial institutions from time to time party hereto as lenders (each, a "Lender" and, collectively, the "Lenders"); (E) PNC BANK, NATIONAL ASSOCIATION, a national banking association (as further defined below, "PNC"), in its capacities as a Lender, the Swing Line Lender (as defined below) and LC Issuer (as defined below); and (F) PNC, in its capacities as administrative agent and collateral agent for the Lenders, LC Issuer and the other Secured Parties (defined below) (PNC, acting in such latter capacities, and as further defined below, "Administrative Agent," "Collateral Agent" or "Agent").

WITNESSETH:

WHEREAS, Credit Parties have requested that Administrative Agent and the Lenders establish a revolving credit facility in favor of Borrowers and that LC Issuer establish a letter of credit sub-facility for the account of Borrowers, all for the purposes set forth herein; and

WHEREAS, Administrative Agent, the Lenders, and LC Issuer are willing to provide such revolving credit facility and letter of credit sub-facility to Borrowers subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, each Credit Party, Administrative Agent, each Lender, and LC Issuer, each intending to be legally bound, hereby covenant and agree as follows:

SECTION 1

DEFINITIONS; RULES OF CONSTRUCTION

1.1 **Definitions.** Capitalized terms used herein that are not otherwise defined herein shall have the respective meanings set forth in this **Section 1.1** or, in the case of the Financial Covenants, in **Section 10.1**, as applicable. As used in this Agreement (including in the introductory paragraph, the recitals, and the Annexes, Exhibits and Schedules hereto) and, as applicable, any other Loan Documents (to the extent not expressly defined therein), the following terms shall have the following meanings:

“ABL Priority Collateral” shall have the meaning set forth in the Term Loan Intercreditor Agreement.

“Accounts” means and includes, as to each Credit Party, all of such Credit Party’s accounts (as defined in Article 9 of the UCC) and all of such Credit Party’s contract rights, instruments (including those evidencing Debt owed to such Credit Party by its Affiliates), documents, chattel paper (including electronic chattel paper), general intangibles relating to accounts, contract rights, instruments, documents and chattel paper, all drafts and acceptances, and all other forms of obligations owing to such Credit Party arising out of or in connection with the sale or lease of Inventory or the rendition of services, all supporting obligations, guarantees and other security therefor, whether secured or unsecured, now existing or hereafter created, and whether or not specifically sold or assigned to Administrative Agent hereunder.

“Accounts Payable Report” shall have the meaning set forth in **Section 8.6(a)(iii)**.

“Accounts Receivable Report” shall have the meaning set forth in **Section 8.6(a)(i)**.

“ACH” shall have the meaning set forth in the definition of “Bank Products”.

“Acquisition” means any acquisition (whether by purchase, exchange, issuance of stock, or other equity or Debt securities, merger, Division, reorganization, amalgamation, or any other method and whether by a single transaction or a series of related or unrelated transactions) by any Credit Party or Subsidiary of (a) any Equity Interests issued by any other Person, but only if such acquisition results in such Credit Party or Subsidiary owning fifty percent (50%) or more of such Equity Interests or otherwise obtaining Control of such Person; (b) all or substantially all of the assets of any other Person; or (c) assets that constitute all or substantially all of any division, line of business or other operating unit of the business of any other Person.

“Administrative Agent,” “Collateral Agent” or “Agent” means PNC, in its capacity as administrative agent, collateral agent or agent for the Lenders, LC Issuer and each other Secured Party, together with its successors and assigns.

“Administrative Agent Indemnitees” means Administrative Agent, its Related Parties and all Administrative Agent Professionals.

“Administrative Agent Professionals” means attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Administrative Agent at any time or from to time in connection with, or pursuant to, and in accordance with the terms of this Agreement or any other Loan Document.

“Administrative Questionnaire” means an administrative questionnaire provided by each Lender to Administrative Agent in connection herewith in a form supplied or approved by Administrative Agent for such purpose.

“Adverse Proceeding” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Credit Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign, whether pending or, to the knowledge of any Credit Party or any of its Subsidiaries, threatened in writing, in each case, against any Credit Party or any of its Subsidiaries or any material Property of any Credit Party or any of its Subsidiaries (including an Insolvency Proceeding or appellate proceeding).

“Affected Financial Institution” means (i) any EEA Financial Institution, and (ii) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, any other Person that, directly or indirectly, is in Control of, is Controlled by, or is under common Control with the Person specified, or that is a director, officer, manager or partner of such Person. Without limitation of the foregoing, for purposes of this definition, “Control,” when used with respect to any Person, means possession of the power to control, or to direct or cause the direction of, the management or policies of such Person or any of its Property, whether by ownership, the voting of such Equity Interests, by contract or otherwise.

“Agent Party” and “Agent Parties” have the respective meanings given to such term in **Section 15.1(d)(i)**.

“Aggregate Revolving Obligations” means, at any time of determination, the sum (without duplication) of (a) the outstanding principal amount of all Revolving Loans (including Swing Line Loans, Over Advance Loans and Protective Advances) and (b) the outstanding amount of all LC Obligations.

“Agreement” has the meaning set forth in the preamble hereto.

“Agreement Currency” shall have the meaning set forth in **Section 15.22**.

“Allocable Amount” shall have the meaning set forth in **Section 5.7(c)(i)**.

“ALTA” means American Land Title Association.

“Alternate Base Rate” means, on any date of determination, a rate per annum equal to the highest of (a) the Prime Rate in effect on such date, (b) the sum of the Overnight Bank Funding Rate in effect on such date plus one half of one percent (0.50%), and (c) the sum of the Daily Simple SOFR in effect on such day plus one percent (1.00%), so long as a Daily Simple SOFR is offered, ascertainable and not unlawful; provided, however, if the Alternate Base Rate as determined above would be less than zero, then such rate shall be deemed to be zero. Any change in the Alternate Base Rate (or any component thereof) shall take effect at the opening of business on the day such change occurs.

“Anti-Corruption Laws” means the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq*, the UK Bribery Act of 2010 and all other laws, rules, and regulations of any jurisdiction applicable to any Credit Party or any of its Affiliates from time to time concerning or relating to bribery or corruption.

“Anti-Terrorism Laws” means any U.S. economic sanctions regulations administered by OFAC and the Department of State and the U.S. Bank Secrecy Act, and any other applicable laws relating to the prevention of terrorism or money laundering, including the PATRIOT Act and all OFAC rules and regulations, including Executive Order 13224.

“Applicable Law” means all laws, rules and regulations applicable to the Person, conduct, transaction, agreement, or matter in question, including all applicable statutory law, common law, and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders, and decrees of Governmental Authorities. Without limitation of the foregoing, “Applicable Law” includes, to the extent applicable to the Person, conduct, transaction, agreement or matter in question, all Anti-Corruption Laws, Anti-Terrorism Laws, the Beneficial Ownership Regulation, the Code, the Commodity Exchange Act, all Debtor Relief Laws, any Bail-In Legislation, ERISA, the Exchange Act, FATCA, the FDPA, the FLSA, OSHA and the UCC.

“Applicable Margin” means, subject to the terms of this definition, with respect to any Type of Loan and at any time of determination, the percentage rate per annum set forth in the following table, as determined by reference to Average Excess Availability:

Level	Average Excess Availability	Revolving Loan	
		Base Rate Loans	Term SOFR Rate Loans
I	Greater than 66.7% of the Borrowing Base	0.50%	1.50%
II	Less than or equal to 66.7% but greater than 33.3% of the Borrowing Base	1.00%	2.00%
III	Less than or equal to 33% of the Borrowing Base	1.50%	2.50%

The Applicable Margin shall be subject to reduction or increase, as applicable and as set forth in the tables above, on a monthly basis on each Determination Date, and any such reduction or increase shall be automatic and without notice to any Person. Without limiting Administrative Agent’s or Required Lenders’ rights to invoke the Default Rate, as provided in **Section 3.1(a)**, if the Borrowing Base Certificate and related reports setting forth the Borrowing Base and the basis therefor are not received by Administrative Agent on or before the applicable dates required pursuant to **Section 8.6(a)**, as applicable, and Administrative Agent or Required Lenders so elect, then, in any such case, from the date such Borrowing Base Certificate or related reports were required to be delivered, the Applicable Margin shall, at the option of Administrative Agent or the Required Lenders, be at the Level with the highest rates of interest until such time as such Borrowing Base Certificate and related reports are received by Administrative Agent.

Any of the foregoing to the contrary notwithstanding, on and after the Third Amendment Effective Date to, but not including, the first Determination Date, the Applicable Margin shall be equal to the percentage set forth in Level III in the table above. As used herein, “Determination Date” means the first day of each calendar month, beginning with January 1, 2025.

If any Borrowing Base Certificate or any other report on which Excess Availability or Average Excess Availability is determined or reported to Administrative Agent (any such Borrowing Base Certificate or other report, an “Applicable Report”) is shown to be inaccurate prior to Payment in Full, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Period”) than the Applicable Margin actually applied for such Applicable Period, then (A) Borrowers shall promptly (and in any event within three (3) Business Days after the first discovery of such inaccuracy or upon notice by Administrative Agent of such determination) deliver to Administrative Agent a correct Applicable Report for the Applicable Period; (B) Administrative Agent shall notify Borrower Representative of the amount of interest that would have been due in respect of any outstanding Obligations during the Applicable Period had the Applicable Margin for the Applicable Period been calculated based on a correct Applicable Report (whether or not Borrowers comply with the immediately preceding clause (A)); provided that, if Borrowers or Administrative Agent reasonably determine that a correct Applicable Report would have resulted in a higher Applicable Margin for one (1) or more Applicable Periods and lower pricing, as applicable, for one (1) or more Applicable Periods, then the amount payable by Borrowers shall be equal to the excess amount, if any, that should have been paid by Borrowers for all such Applicable Periods over the amount actually paid by Borrowers for all such Applicable Periods; and (C) Borrowers shall pay Administrative Agent, within three (3) Business Days of written demand therefor, the difference between the amount of interest that would have been due in respect of such Applicable Period and the amount actually paid in respect of such Applicable Period (provided that, notwithstanding anything to the foregoing, no Default or Event of Default shall be deemed to have occurred as a result of such non-payment (and no such shortfall amount shall be deemed overdue or accrue interest at the Default Rate) unless such shortfall amount is not paid on or prior to the third Business Day of such three (3) Business Day period; provided further that, none of the Secured Parties shall be required to refund or return any portion of any excess amount paid by Borrowers, if any).

“Applicable Period” shall have the meaning set forth in the definition of “Applicable Margin”.

“Applicable Report” shall have the meaning set forth in the definition of “Applicable Margin”.

“Applicable Tax Percentage” means the highest effective marginal combined rate of Federal, state, and local income taxes (taking into account the deductibility of state and local taxes for Federal income tax purposes) to which any Person directly or indirectly holding Equity Interests of a Credit Party would be subject in the relevant year of determination, taking into account only such Person’s share of income and deductions attributable to its equity ownership interest in such Credit Party.

“Approved Electronic Communication” means each notice, demand, communication, information, document and other material transmitted, posted or otherwise made or communicated by e-mail, e-fax, the Credit Management Module of PNC’s PINACLE® system, or any other equivalent electronic service agreed to by Administrative Agent, whether owned, operated or hosted by Administrative Agent, any Lender, any of their Affiliates or any other Person, that any party is obligated to, or otherwise chooses to, provide to Administrative Agent pursuant to this Agreement or any other Loan Document, including any financial statement, financial and other report, notice, request, certificate and other information material; provided that Approved Electronic Communications shall not include any notice, demand, communication, information, document or other material that Administrative Agent specifically instructs a Person to deliver in physical form.

“Approved Fund” means any Entity that (a) is (or will be) engaged in making, purchasing, holding, or otherwise investing in commercial loans and similar extensions of credit in its ordinary course of activities and (b) is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) an Entity or an Affiliate of an Entity that administers or manages a Lender.

“Article 9 Control” means, with respect to any asset, right, or Property with respect to which a security interest therein is perfected by a secured party’s having “control” thereof (whether pursuant to the terms of an agreement or through the existence of certain facts and circumstances), that Administrative Agent has “control” of such asset, right, or Property in accordance with the terms of Article 8 or Article 9 of the UCC. Without limitation of the foregoing, so long as PNC is Administrative Agent, Administrative Agent shall be deemed to have “control” of any Funding Account, Collections Account, Securities Account, Commodities Account or Deposit Account maintained with PNC or any Affiliate of PNC, including any maintained by or through PNC or any agents or correspondents acting on behalf of PNC without the necessity of having an Article 9 Control Agreement executed in connection therewith; provided, that, without limiting the generality of the foregoing, each Credit Party owning any Deposit Accounts, Commodities Accounts or Securities Accounts shall promptly, upon request from Administrative Agent (but in any event not later than thirty (30) days after receipt of such request, unless otherwise approved by Administrative Agent), execute and deliver to Administrative Agent an Article 9 Control Agreement in its favor, in its capacities as secured party and depository institution, regarding such Deposit Accounts, Securities Accounts and Commodities Accounts (in each case, other than any Excluded Account).

“Article 9 Control Agreement” means an agreement among Administrative Agent, any one or more Credit Parties and another Person pursuant to which Article 9 Control is established in favor of Administrative Agent with respect to any asset, right or Property of a Credit Party, or Credit Parties, including any Deposit Account, Commodities Account or Securities Account, or any funds or securities, respectively, on deposit therein, situated at or with such Person(s).

“Asset Disposition” means, with respect to any Person, a sale, issuance, assignment, Division, lease, license (including any License), Consignment, transfer, abandonment, or other disposition of such Person’s Property, including a disposition of Property in connection with a sale-leaseback transaction, synthetic lease, securitization or similar arrangement, excluding a disposition resulting from a Loss.

“Assignment Agreement” means an assignment agreement entered into by a Lender and an Eligible Assignee (with the consent of each other party hereto whose consent is required by **Section 13.1(b)**) and accepted by Administrative Agent, in substantially the form of Exhibit B or any other form (including electronic documentation generated by MarkitClear or other electronic Platform in which said parties are participants) requested or approved by Administrative Agent in its discretion from time to time and acceptable to Borrower Representative.

“Auto Borrow Agreement” has the meaning specified in **Section 2.3(b)(vi)**.

“Availability Block” has the meaning specified in the definition of “Borrowing Base”.

“Availability Block Release Date” means the date that the Availability Block Release Event occurs.

“Availability Block Release Event” means delivery by Borrower Representative to Administrative Agent and Term Loan Agent of a certificate in form and substance reasonably satisfactory to Administrative Agent and Term Loan Agent certifying as to (a) Borrowers having maintained a Fixed Charge Coverage Ratio based on a trailing four (4) Fiscal Quarter calculation of not less than 1.10 to 1.00 for fiscal quarter ending December 31, 2024, and (b) no Default or Event of Default is then continuing.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor of such Benchmark that is then-removed from the definition of “Interest Period” pursuant to **Section 14.1**.

“Average Excess Availability” means, for any tested period, Excess Availability for each day of such period divided by the number of days in such period.

“Average Liquidity” means, for any three (3) consecutive day period, the sum of Liquidity calculated as of each day of such three (3) consecutive day period, divided by three (3).

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of the applicable Resolution Authority.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank Product Agreement” means any agreement between one or more Obligor and a Bank Product Provider evidencing the making available of any Bank Product by such Bank Product Provider to such Obligor. The foregoing includes, without limitation, Swap Agreements.

“Bank Product Obligations” means, without duplication, (i) all Debts, liabilities and other obligations of any Obligor to any Bank Product Provider arising under, pursuant to or in connection with Bank Products, and (ii) without duplication, all amounts that Administrative Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Administrative Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to any Bank Products provided by such Bank Product Provider to any Obligor.

“Bank Product Provider” means (a) any of PNC and its Affiliates, and (b) any other Person that, at the time it enters into a Bank Product Agreement, is a Lender or an Affiliate of a Lender. For purposes hereof, the term “Lender” shall be deemed to include Administrative Agent.

“Bank Product Reserve” means an amount determined from time to time by Administrative Agent in its Permitted Discretion as a Reserve for Bank Product Obligations.

“Bank Products” means all bank, banking, financial, and other similar or related products, services, and facilities offered or provided by any Bank Product Provider to any Obligor, including (a) merchant card services, credit or stored value cards and corporate purchasing cards; (b) cash management, treasury, and related products and services, including depository and checking services, Deposit Accounts (whether operating, money market, investment, collections, payroll, trust, disbursement, or other Deposit Accounts), Securities Accounts, automated clearinghouse (“ACH”) transfers of funds and any other ACH services, remote deposit capture, lockboxes, account reconciliation and information reporting, controlled disbursements, wire and other electronic funds transfers, e-payable, overdraft protection, stop payment services and fraud protection services (all of the products and services described in this clause (b), collectively, “Treasury Services”); (c) bankers’ acceptances, drafts, documentary services, foreign currency exchange services; and (d) Swap Obligations and other Obligations arising under Swap Agreements.

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Event of Default” means an Event of Default under either **Section 11.1(k)** or **Section 11.1(l)**.

“Base Rate Loan” means a Loan that bears interest at a rate based on the Alternate Base Rate plus the Applicable Margin.

“Base Rate Revolving Loan” means a Revolving Loan bearing interest at a rate based on the Alternate Base Rate.

“Benchmark” means, initially, SOFR and the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the then-current Benchmark, then “Benchmark” shall mean the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to **Section 14.1**.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of (A) Daily Simple SOFR plus (B) 0.10% (10 basis points); or

(2) the sum of: (a) the alternate benchmark rate that has been selected by Administrative Agent and Borrower Representative, giving due consideration to (x) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (y) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment;

provided that, if the Benchmark Replacement as determined pursuant to clause (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents; provided further that any Benchmark Replacement shall be administratively feasible as determined by Administrative Agent in its sole discretion.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustments, (which may be a positive or negative value or zero) that has been selected by Administrative Agent and Borrower Representative giving due consideration to (A) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (B) 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 such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Date” means a date and time determined by Administrative Agent, which date shall be no later than the earlier to occur of the following events with respect to the then-current Benchmark:

(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 such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date determined by Administrative Agent, which date shall promptly follow the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, if such Benchmark is a term rate or is based on a term rate, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or component thereof) or, if such Benchmark is a term rate or is based on a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by a Relevant Governmental Body having jurisdiction over Administrative Agent, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate or is based on a term rate, all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate or is based on a term rate, any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) or a Relevant Governmental Body having jurisdiction over Administrative Agent announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any other Loan Document in accordance with **Section 14.1** and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any other Loan Document in accordance with **Section 14.1**.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership of any Credit Party as required by the Beneficial Ownership Regulation, and otherwise to be in form and substance reasonably satisfactory to Administrative Agent.

“Beneficial Ownership Regulation” means 31 CFR Section 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Blocked Account Bank” and “Blocked Account Banks” have the respective meanings given to such terms in **Section 8.12(e)**.

“Blocked Account” and “Blocked Accounts” have the respective meanings given to such terms in **Section 8.12(e)**.

“Board of Governors” means the Board of Governors of the Federal Reserve System.

“Borrower” and “Borrowers” have the respective meanings set forth in the preamble hereto.

“Borrower Representative” shall have the meaning set forth in **Section 4.3**.

“Borrowers’ Account” shall mean a loan account in the name of Borrowers in which Administrative Agent will record the date and amount of each Loan made by Administrative Agent or Lenders and the date and amount of each payment in respect thereof.

“Borrowing” means (a) a borrowing consisting of simultaneous Loans of the same Type of Loan and, in the case of Term SOFR Rate Loans, having the same Interest Period, or (b) a borrowing of Swing Line Loans, as appropriate.

“Borrowing Base” means, on any date of determination, an amount, calculated in Dollars, equal to:

- (a) ninety percent (90%) of the total amount of Eligible Investment Grade Accounts; plus
- (b) eighty-five percent (85%) of the total amount of Eligible Non-Investment Grade Accounts; plus
- (c) ninety percent (90%) of Eligible Credit Card Receivables; plus
- (d) the lesser of (i) eighty-five percent (85%) of the NOLV Percentage of Eligible Inventory (other than Eligible Inventory (Coffee)) and (ii) seventy percent (70%) of Eligible Inventory (other than Eligible Inventory (Coffee)) valued at FIFO cost; plus
- (e) the lesser of (i) eighty-five percent (85%) of the NOLV Percentage of Eligible Inventory (Coffee) and (ii) ninety percent (90%) of Eligible Inventory valued at FIFO cost; plus
- (f) one hundred percent (100%) of unencumbered (other than Liens (x) in favor of the Secured Parties and (y) in favor of the Term Loan Agent) and unrestricted cash and Cash Equivalents maintained with PNC in a blocked account; minus
- (g) from the Closing Date through and including the Availability Block Release Date, \$5,000,000 (the “Availability Block”); minus
- (h) Reserves determined by Administrative Agent from time to time in its Permitted Discretion.

Administrative Agent shall have the continuing, independent right to determine the Borrowing Base from time to time in accordance with the terms of this Agreement, whether from data provided by Borrowers or otherwise. Each determination by Administrative Agent of the Borrowing Base shall be conclusive and binding for all purposes, absent manifest error.

“Borrowing Base Certificate” means a borrowing base certificate substantially in the form of Exhibit E or such other form as may be requested by or acceptable to Administrative Agent from time to time in its Permitted Discretion and acceptable to Borrower Representative.

“Business Day” means any day other than Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by Applicable Law to be closed for business in East Brunswick, New Jersey; provided that, when used in connection with an amount that bears interest at a rate based on SOFR or any direct or indirect calculation or determination of SOFR, the term “Business Day” shall mean any such day that is also a U.S. Government Securities Business Day.

“Capital Expenditures” means, for any period, the aggregate cost of all capital assets acquired by Borrowers and their Subsidiaries during such period (including gross leases to be capitalized under GAAP and leasehold improvements), as determined in accordance with GAAP.

“Capital Lease” means any lease that, in accordance with GAAP, subject to **Section 1.2**, is required to be capitalized for financial reporting purposes.

“Cash Collateral” shall have the meaning set forth in the definition of “Cash Collateralize.”

“Cash Collateralize” means, to pledge and deposit with or deliver to Administrative Agent, the Bank Product Provider, LC Issuer or Swing Line Lender, as applicable, as collateral for the Bank Product Obligations (other than Excluded Bank Product Obligations), LC Obligations or Swing Line Loans, as applicable, or obligations of Lenders to fund participations in respect thereof, cash or Deposit Account balances or, if Administrative Agent, or the Bank Product Provider, LC Issuer or Swing Line Lender, as applicable, may agree, each in its reasonable discretion, other credit support, in each case pursuant to documentation in form and substance, and in an amount (but not more than one hundred five percent (105%) of the obligated amount), in each case, reasonably satisfactory to Administrative Agent, such Bank Product Provider, LC Issuer and/or Swing Line Lender, as applicable, in its or their reasonable discretion. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support including any cash and any interest or other income earned thereon.

“Cash Dominion Excess Availability Triggering Event” means the first date to occur on which Excess Availability is less than the greater of (a) \$9,500,000 and (b) an amount equal to 12.5% of the Revolving Commitments for five (5) consecutive days.

“Cash Dominion Period” means the period commencing upon the occurrence of a Cash Dominion Triggering Event and ending on the occurrence of a Cash Dominion Satisfaction Event.

“Cash Dominion Satisfaction Event” means the earliest date on which all of the following conditions precedent have been satisfied: (a) if the Cash Dominion Triggering Event shall have occurred as a result of the occurrence of a Cash Dominion Excess Availability Triggering Event: (i) Excess Availability is greater than \$9,500,000 for thirty (30) consecutive days, and (ii) no Event of Default is continuing; and (b) if the Cash Dominion Triggering Event shall have occurred as a result of the occurrence of a Specified Event of Default, such Specified Event of Default shall have been waived in writing by all of the Lenders or the Required Lenders, as applicable.

“Cash Dominion Triggering Event” means the earlier to occur of the following: (a) a Cash Dominion Excess Availability Triggering Event and (b) a Specified Event of Default.

“Cash Equivalents” means, as of any date of determination, any of the following: (a) marketable securities (i) issued or directly and unconditionally Guaranteed as to interest and principal by the United States government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (c) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (d) certificates of deposit or bankers’ acceptances maturing within one (1) year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than \$500,000,000, and (iii) has the highest rating obtainable from either S&P or Moody’s.

“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, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued and (iii) all requests, rules, guidelines or directives issued by a Governmental Authority in connection with a Lender’s submission or re-submission of a capital plan under 12 C.F.R. Section 225.8 or a Governmental Authority’s assessment thereof, shall, in each case of clause (i), (ii) or (iii) above, be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means the occurrence of any one or more of the following:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, becomes, directly or indirectly, the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of fifty percent (50%) or more of the Voting Equity Interests of Parent entitled to vote for members of the board of directors or other equivalent Governing Body of Parent on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right);

(b) Parent ceases to own and Control, beneficially and of record, directly or indirectly, all Equity Interests in all Credit Parties (other than resulting from (x) the sale or other disposition of 100% of the Equity Interests of a Credit Party, (y) the dissolution of a Credit Party or (z) the merger of a Credit Party with and into another Credit Party, in each case, that is otherwise permitted under this Agreement) (excluding Parent and, if it becomes a Credit Party in accordance with this Agreement, Holdings); or

(c) any “change in control,” as that term (or any similar term) is defined in any document governing any Funded Debt exceeding the Threshold Amount of any Credit Party, shall occur.

Notwithstanding the preceding or any provision of Section 13d-3 or 13d-5 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Equity Interests subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Equity Interests in connection with the transactions contemplated by such agreement, (ii) if any group (other than a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Equity Interests of any Borrower owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of determining whether a Change of Control has occurred and (iii) a Person or group will not be deemed to beneficially own the Equity Interests of another Person as a result of its ownership of the Equity Interests or other securities of such other Person’s parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Equity Interests entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity.

“CIP Regulations” shall have the meaning set forth in **Section 12.15(b)**.

“Claims” means all liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs, disbursements, and expenses of any kind (including fees, costs, and expenses of attorneys and paralegals, experts, agents, consultants, and advisors, and Extraordinary Expenses) at any time (including before or after the Closing Date, after Payment in Full of the Obligations, or resignation or replacement of Administrative Agent) incurred by or asserted against or imposed on any Indemnitee as a result of, or arising from or in connection with, (a) any Loans, Letters of Credit, Loan Documents, or the use thereof or transactions relating thereto; (b) any action taken or omitted to be taken by any Indemnitee in connection with any Loan Documents; (c) the existence or perfection of any Liens, or realization upon any Collateral; (d) exercise of any rights or remedies under any Loan Documents or Applicable Law; or (e) failure by any Credit Party to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any Adverse Proceeding, whether or not the applicable Indemnitee is a party thereto.

“Closing Date” means the date first inscribed hereinabove.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

“Collateral Disclosure Certificate” shall have the meaning set forth in the Security Agreement.

“Collection Account” means a Deposit Account established or maintained by a Credit Party at PNC that is utilized solely for purposes of receiving or collecting payments made by such Credit Party’s Account Debtors and other Proceeds of Collateral and over which Administrative Agent shall have exclusive Article 9 Control to withdraw or otherwise direct the disposition of funds on deposit therein.

“Commitment” means, for any Lender, the amount of such Lender’s Revolving Commitment. “Commitments” means the aggregate amount of all Revolving Commitments.

“Commitment Termination Date” means the earliest to occur of the following: (a) the Stated Revolving Commitment Termination Date; (b) the date on which Borrowers terminate the Revolving Commitments pursuant to **Section 2.1(c)**; and (c) the date on which the Revolving Commitments are terminated pursuant to **Section 11.2**.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

“Compliance Certificate” means a certificate in the form of **Exhibit F** or such other form as may be requested or approved by Administrative Agent from time to time in its Permitted Discretion and acceptable to Borrower Representative.

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

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

“Consolidated” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) on a consolidated basis in accordance with the applicable principles of consolidation under GAAP.

“Consolidated Capital Expenditures” means, for any fiscal period and determined on a Consolidated basis in accordance with Applicable Law and GAAP, the aggregate amount of all Capital Expenditures paid in cash of the Tested Companies made during such period.

“Consolidated Cash Taxes Paid” means, for any fiscal period and determined on a Consolidated basis in accordance with Applicable Law and GAAP, the sum of all income taxes paid in cash by the Tested Companies during such period (net of all income tax refunds and credits received in cash by the Tested Companies during such period), which number for the applicable period of computation shall not be less than zero.

“Consolidated EBITDA” means, for any fiscal period and determined on a consolidated basis in accordance with Applicable Law and GAAP, the sum of the Tested Companies:

- (a) Consolidated Net Income (computed without regard to any extraordinary items of gain or loss), plus

(b) without duplication, the sum of the following to the extent included in the calculation of Consolidated Net Income for such period:

(i) Consolidated Interest Expense;

(ii) income tax expense (including, without limitation, any federal, state, local and foreign income and similar taxes) for such period;

(iii) depreciation and amortization expense for such period;

(iv) any aggregate net loss (less, even if it results in a negative number, gains) on the Disposition of property (other than accounts and Inventory) outside the ordinary course of business;

(v) any extraordinary (as such term was defined under GAAP prior to giving effect to FASB 2015-01), nonrecurring or unusual costs, charges, expense or losses (including litigation and settlement costs and expenses) that are reasonably identifiable and factually supportable in Borrower's good faith judgment, in each case so long as Agent shall have received reasonable supporting detail for such amounts in form and substance reasonably acceptable to Agent; subject to a cap, not to exceed, together with any amounts added back pursuant to clauses (b)(ix), and (b)(xv) hereof, the greater of \$5,000,000 and 20.0% of Adjusted EBITDA before giving effect to such cap (the "**Shared Cap**");

(vi) any other non-cash expenditure, charge or loss for such period (excluding write offs or write downs that relate to inventory or accounts receivable or any write offs in connection with any prepaid asset and any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period);

(vii) fees, costs and expenses incurred in connection with (A) the Transactions, any amendments, modifications or waivers of the Loan Documents after the Effective Date, and any consummated permitted acquisitions, other consummated permitted investments, permitted issuances of Indebtedness or equity interest and permitted dispositions, and (B) any unconsummated acquisitions, investments, issuances of Indebtedness or equity interest and dispositions that would have been permitted hereunder if consummated in an amount not to exceed \$500,000 in the aggregate for all such unconsummated acquisitions, issuances of Indebtedness or equity interest and dispositions;

(viii) [reserved];

(ix) to the extent not already included in the determination of Consolidated Net Income, (A) pro forma "run rate" cost savings, operating expense reductions, operating improvements and cost synergies that result (or that are expected in good faith to result in the following twelve months, net of the amount of actual benefits realized from such actions during such period) from the Transactions, Acquisitions, Dispositions, recapitalizations, other similar transactions, operating improvements or changes, restructurings, cost-savings and similar initiatives, plans or other actions; provided, that (x) such cost savings, operating expense reductions, operating improvements and synergies are reasonably identifiable, factually supportable and reasonably attributable to the actions specified so long as Agent shall have received reasonable supporting detail for amounts included in this subclause (A) in form and substance reasonably acceptable to Agent and (y) such actions have been taken, and (B) all restructuring costs, integration costs, expenses and losses relating to the undertaking of cost-saving initiatives, operating expense reductions and other synergies and similar initiatives, retention, recruiting, relocation and signing bonuses and expenses or severance costs and other similar transaction costs, costs associated with implementation of enterprise-wide resource planning system, product and site development costs and any one-time expense relating to enhanced accounting function or other similar transaction costs; provided that the aggregate amount added back pursuant to this clause (ix) together with any amounts added back pursuant to clauses (b) (v) and (b)(xv) hereof shall not exceed the Shared Cap;

(x) proceeds of business interruption insurance policies and cyber insurance policies actually received in cash in an amount representing the earnings for the applicable period that such proceeds are intended to replace;

(xi) all non-cash costs or expenses (less non-cash gains or income) incurred pursuant to any management equity plan or stock option plan, share-based incentive compensation plan or any other management or employee benefit plan or arrangement, pension plan, any stock subscription or stockholders agreement or any distributor equity plan or agreement, including any non-cash charges arising from the grant or settlement of virtual stock option programs, stock appreciation or similar rights;

(xii) losses, expenses and payments that are covered by indemnification, reimbursement, guaranty or purchase price adjustment provisions in any agreement entered into by Parent or any of its Subsidiaries (A) in such period to the extent such losses, expenses and payments have been actually reimbursed in such period in cash pursuant to the applicable third-party insurance, indemnity, guaranty or acquisition agreement or (B) within the twelve month period prior to the current period to the extent such losses, expenses and payments were actually reimbursed in the current period in cash pursuant to the applicable third-party insurance, indemnity, guaranty or acquisition agreement and not added back to Adjusted EBITDA within the twelve month period prior to the current period;

(xiii) effects of non-cash adjustments (including, without limitation, the effects of such adjustments pushed down to Parent and its Subsidiaries) in such Person's consolidated financial statements pursuant to GAAP (including, without limitation, in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition or the amortization or write-off of any amounts thereof (other than any purchase accounting adjustments related to above-market leases);

(xiv) losses in connection with foreign currency exchanges; and

(xv) the amount of any one-time restructuring charge or reserve including, without limitation, in connection with (i) acquisitions after the Closing Date and (ii) the consolidation or closing of facilities and written-off site development costs, provided that the aggregate amount added back pursuant to this clause (xv) together with any amounts added back pursuant to clauses (b)(v) and (b)(ix) hereof shall not exceed the Shared Cap; minus

(c) without duplication, the sum of the following amounts for such period to the extent included in the calculation of such Consolidated Net Income for such period (other than clause (vi) below):

(i) any credit for United States federal income taxes or other taxes measured by net income;

(ii) any aggregate net gain from the Disposition of property (other than accounts and Inventory) outside the ordinary course of business;

(iii) any gain from extraordinary, unusual or nonrecurring items;

(iv) gains in connection with foreign currency exchanges;

(v) amounts for any other non-cash gains (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash items in any prior period); and

(vi) any cash payments made during such period in respect of non-cash charges or expenses described in clauses (b)(vi) and (xi) of this definition added-back in a prior period.

Notwithstanding the foregoing, (x) Consolidated EBITDA for any period shall be reduced by the aggregate carrying value of any charitable donations of cash or other property made during such period to the extent that such amount is not otherwise deducted from Consolidated Net Income or Consolidated EBITDA in accordance with the definitions thereof and (y) Consolidated EBITDA for the fiscal quarters listed below shall be the amounts set forth opposite such fiscal quarters listed below, subject to any pro forma adjustments for events occurring after the Third Amendment Effective Date in accordance herewith:

<u>Fiscal Quarter Ending:</u>	<u>Consolidated EBITDA:</u>
December 31, 2023	\$12,147,000
March 31, 2024	\$14,125,000
June 30, 2024	\$8,450,000
September 30, 2024	\$7,104,000

“Consolidated Funded Debt” means, for any fiscal period and determined on a Consolidated basis in accordance with Applicable Law and GAAP, all Funded Debt of the Tested Companies for such period.

“Consolidated Interest Expense” means, for any fiscal period and determined on a Consolidated basis in accordance with Applicable Law and GAAP, all interest expense (including that attributable to the interest component or portion of Capital Leases) of the Tested Companies for such period.

“Consolidated Interest Paid” means, for any fiscal period and determined on a Consolidated basis in accordance with Applicable Law and GAAP, all interest (including that attributable to the interest component or portion of Capital Leases) paid by the Tested Companies in cash during such period.

“Consolidated Net Income” means, for any fiscal period and determined on a Consolidated basis in accordance with Applicable Law and GAAP, the net income (or net deficit) of the Tested Companies for such period; provided that there shall be excluded from Consolidated Net Income the net income (or net deficit) of any Person (other than a Subsidiary) in which any of the Tested Companies has a joint interest with a third party, except to the extent such net income is actually paid in cash to such Tested Company by dividend or other distribution during such period.

“Control” (and any correlative terms, including “common control,” “controlling” and “controlled by”) means the power to direct or control, or have a controlling influence over, the management or policies of a Person or any Property, whether by ownership, the voting of Equity Interests, by contract or otherwise.

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

“Credit Card Agreements” shall have the meaning set forth in the Security Agreement.

“Credit Card Issuer” shall have the meaning set forth in the Security Agreement.

“Credit Card Processor” shall have the meaning set forth in the Security Agreement.

“Credit Card Receivables” means amounts, together with all income, payments and Proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Credit Party resulting from charges by a customer of a Credit Party on a credit or debit card issued by such Credit Card Issuer or processed by such Credit Card Processor (including, without limitation, electronic benefits transfers) in connection with the sale of goods by a Credit Party in the Ordinary Course of Business.

“Credit Party” means (a) each Borrower and (b) each other Obligor that is party to this Agreement as of the Closing Date or that, by execution of a Joinder Agreement, agrees to become a “Borrower” or a “Credit Party” under this Agreement on or after the Closing Date.

“Customer” means and include the account debtor with respect to any Account and/or the prospective purchaser of goods, services or both with respect to any contract or contract right, and/or any party that enters into or proposes to enter into any contract or other arrangement with any Credit Party, pursuant to which such Credit Party is to deliver any personal property or perform any services.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), the interest rate per annum determined by Administrative Agent by dividing (the resulting quotient rounded upwards, at Administrative Agent’s discretion, to the nearest 1/100th of 1%) (A) SOFR for the day (the “SOFR Determination Date”) that is two (2) Business Days prior to (i) such SOFR Rate Day if such SOFR Rate Day is a Business Day or (ii) the Business Day immediately preceding such SOFR Rate Day if such SOFR Rate Day is not a Business Day, by (B) a number equal to 1.00 minus the SOFR Reserve Percentage, in each case, as such SOFR is published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source identified by the Federal Reserve Bank of New York or its successor administrator for the secured overnight financing rate from time to time. If Daily Simple SOFR as determined above would be less than the SOFR Floor, then Daily Simple SOFR shall be deemed to be the SOFR Floor. If SOFR for any SOFR Determination Date has not been published or replaced with a Benchmark Replacement by 5:00 p.m. (New York City time) on the second Business Day immediately following such SOFR Determination Date, then SOFR for such SOFR Determination Date will be SOFR for the first Business Day preceding such SOFR Determination Date for which SOFR was published in accordance with the definition of “SOFR”; provided that SOFR determined pursuant to this sentence shall be used for purposes of calculating Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. If and when Daily Simple SOFR as determined above changes, any applicable rate of interest based on Daily Simple SOFR will change automatically without notice to Borrowers, effective on the date of any such change.

“**Debt**” means, with respect to any Person and without duplication as to such Person, any indebtedness, obligation or liability, whether or not contingent, (a) that (i) arises in respect of borrowed money, (ii) is evidenced by bonds, notes, debentures, or similar instruments, or (iii) accrues interest or is a type upon which interest or finance charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business), (b) representing the balance deferred and unpaid of the purchase price of any Property or services (other than an account payable to a trade creditor incurred in the Ordinary Course of Business of such Person and payable in accordance with customary trade practices), (c) representing obligations of a lessee under leases that have been, or should be, in accordance with GAAP, recorded as Capital Leases, (d) representing any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any Debt described in this definition of another Person, including any such Debt, directly or indirectly Guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such debt, or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition, (e) representing obligations of such Person with respect to Disqualified Equity Interests, (f) representing reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance, or otherwise), letters of credit, bankers’ acceptances, drafts or similar documents or instruments issued for such Person’s account, (g) representing any indebtedness, obligation or liability, whether or not contingent, of such Person in respect of any indebtedness, obligation or liability, whether or not contingent, of another Person, including any such indebtedness, obligation or liability of another Person secured by any Lien on any Property of such Person, whether or not such indebtedness, obligation or liability is assumed by or is a personal liability of such Person, (h) representing any net obligations, liabilities, and debt of such Person (marked-to-market) arising under Swap Agreements, (i) representing any indebtedness, obligation or liability of any partnership or joint venture in which such Person is a general partner or a joint venture member to the extent such Person is liable therefor as a result of such Person’s ownership interest in such Entity, except to the extent that the terms of such arrangement expressly provide that such Person is not liable therefor or such Person has no liability therefor under Applicable Law, (j) representing the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP, (k) representing indebtedness, liabilities or obligations of such Person under conditional sale or other title retention agreements relating to Property purchased by such Person, (l) representing obligations of such Person under any “take or pay” or similar arrangements, and (m) representing Earn-Outs (but only to the extent that such Earn-Out is required to be included as a liability on the balance sheets of such person in accordance with GAAP).

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

“**Default**” means an event or condition that, with the lapse of time or giving of notice, or both, would constitute an Event of Default.

“**Default Rate**” means an interest rate equal to (a) with respect to Base Rate Loans, the Alternate Base Rate plus the Applicable Margin applicable to such Base Rate Loans, plus an additional two percent (2%) per annum, (b) with respect to Term SOFR Rate Loans, the Term SOFR Rate plus the Applicable Margin applicable to Term SOFR Rate Loans plus an additional two percent (2%) per annum and (c) with respect to any other Obligations, the interest rate otherwise specified in regard thereto after default (or if no interest rate is specified, the Alternate Base Rate for Revolving Loans plus the Applicable Margin applicable to such Base Rate Loans), plus an additional two percent (2%) per annum. The Default Rate applicable to Letter of Credit Fees is specified in **Section 3.2(c)**.

“**Defaulting Lender**” means, subject to **Section 4.2(b)**, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days after the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower Representative in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent, LC Issuer, Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two (2) Business Days after the date when due, (b) has notified Borrower Representative, Administrative Agent, LC Issuer or Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower Representative, to confirm in writing to Administrative Agent and Borrower Representative that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower Representative), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 4.2(b)**) upon delivery of written notice of such determination to Borrower Representative, each LC Issuer, each Swing Line Lender and each Lender.

“**Deposit Account**” means any checking or other demand deposit account maintained by the Credit Parties, including any “Deposit Accounts” within the meaning given to such term in Article 9 of the UCC. All funds in such Deposit Accounts shall be conclusively presumed to be Collateral and proceeds of Collateral and Administrative Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the Deposit Accounts.

“**Determination Date**” shall have the meaning set forth in the definition of “Applicable Margin”.

“**Dilution**” means, as of any date of determination, an amount, expressed as a percentage, equal to (a) the Dollar amount of non-cash reduction to the Accounts of Borrowers, including bad debt write-downs, discounts, advertising allowances, rebates, credits, or other dilutive items during the most recently ended period of twelve (12) Fiscal Months, divided by (b) Borrowers’ billings with respect to Accounts during such period.

“**Dilution Reserve**” means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by one (1) percentage point for each percentage point by which Dilution is in excess of five percent (5%), or such lesser (or greater) amount as Administrative Agent, in its Permitted Discretion, shall determine from time to time.

“Disqualified Equity Interests” means, with respect to any Person, any Equity Interest that by its terms (or by the terms of any other Equity Interest into which it is convertible or exchangeable) or otherwise (a) matures or is subject to mandatory redemption or repurchase (other than solely for Equity Interests of such Person that are not Disqualified Equity Interests) pursuant to a sinking fund obligation or otherwise (except as a result of a Change of Control or asset disposition event so long as any rights of the holder thereof upon the occurrence of a Change of Control or asset disposition event shall be subject to the prior Payment in Full of the Obligations (other than any Obligations that expressly survive termination) and termination of the Commitments); (b) is convertible into or exchangeable or exercisable for Debt or any Disqualified Equity Interest at the option of the holder thereof; or (c) may be required to be redeemed or repurchased at the option of the holder thereof (other than (i) solely for Equity Interests of such Person that are not Disqualified Equity Interests or (ii) as a result of a Change of Control or asset disposition event so long as any rights of the holder thereof upon the occurrence of a Change of Control or asset disposition event shall be subject to the prior Payment in Full of the Obligations (other than any Obligations that expressly survive termination) and termination of the Commitments), in whole or in part, in each case on or before the date that is ninety-one (91) days after the Stated Revolving Commitment Termination Date; provided, that if such Equity Interest is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Affiliates or family members or any permitted transferees thereof) of a Credit Party or its Subsidiaries or any parent thereof, such Equity Interest will not constitute a Disqualified Equity Interest solely because it may be required to be repurchased or redeemed by a Credit Party or a Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s, consultant’s or independent contractor’s termination, death or disability.

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

“Dollars” or “\$” means lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States, any State thereof, or the District of Columbia.

“Earn-Outs” means unsecured liabilities of a Credit Party arising under an agreement to make any deferred payment as a part of the aggregate consideration payable for an Acquisition, including performance bonuses or consulting payments in any related services, employment or similar agreement, in an amount that is subject to or contingent upon the revenues, income, cash flow or profits (or the like) of the target of such Acquisition.

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

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

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

“Eligible Account” means, with respect only to each Borrower’s Accounts (excluding Eligible Credit Card Receivables), the aggregate face amount thereof, net of (i) any returns, rebates, discounts (calculated on the shortest terms), credits, or allowances (that have been or could be claimed by the Account Debtor or any other Person), (ii) any Taxes (including sales, excise, or other taxes), and (iii) any finance or interest charges, or late payment charges, **but excluding therefrom, however,** unless otherwise approved by Administrative Agent, without duplication, each Account (or, where expressly stated below, any portion thereof):

- (a) that is not denominated in Dollars;
- (b) that (i) did not arise in the Ordinary Course of Business from the sale of Inventory or (ii) arise pursuant to any License or Royalty;
- (c) not evidenced by a paper invoice or an electronic equivalent acceptable to Administrative Agent;
- (d) that is (i) not subject to a valid, duly perfected, first priority Lien in favor of Administrative Agent (other than (x) non-consensual statutory Liens, (y) junior Liens incurred under the Term Loan Credit Agreement or (z) Liens subject to an intercreditor agreement or Third Party Claimant Agreement on terms satisfactory to Administrative Agent) or (ii) is subject to any other Lien (other than any Permitted Lien);
- (e) as to which any of the covenants, representations, and warranties in this Agreement or the other Loan Documents respecting Accounts shall be untrue, misleading, or in default in any material respect; provided, however, that this clause (e) shall not (i) be deemed a waiver by Administrative Agent, Lenders or Required Lenders of any Default or Event of Default that occurs under this Agreement or any other Loan Document as a result of any such representation, warranty, or covenant being untrue or misleading, or in default or (ii) limit the ability of Administrative Agent to institute Reserves in connection therewith to the extent provided in this Agreement;
- (f) that is outstanding for longer than (i) one hundred twenty (120) days from the original invoice date or (ii) sixty (60) days from the original due date;
- (g) that is owed by any Account Debtor if more than fifty percent (50%) of the Accounts (determined by value of the Accounts and not by their number) owed by such Account Debtor and its Affiliates to Borrowers are deemed ineligible pursuant to this definition of Eligible Accounts;
- (h) that is owed by an Affiliate of any Borrower, Credit Party or Subsidiary;
- (i) that is owed by any creditor of or vendor to a Borrower, Credit Party or Subsidiary but only to the extent of such Borrower’s, Credit Party’s or Subsidiary’s obligations to such Person;
- (j) with respect to which (i) the applicable Account Debtor disputes its liability therefor or is otherwise subject to any counterclaim or defense, reserve or right of setoff, or (ii) that is subject to any contra-account, volume or other rebate, cooperative advertising accrual, deposit, deduction, discount, recoupment, chargeback, incentive, promotion, credit, or allowance arising in the Ordinary Course of Business, but, in each case under the immediately preceding clauses (j)(i) and (j)(ii), only to the extent thereof;

(k) that is owing by any Account Debtor (collectively with all of such Account Debtor's Affiliates) whose aggregate Accounts owing to a Borrower or Borrowers (collectively), exceed twenty percent (20%) of the total of a Borrower's or Borrowers' (collectively) Eligible Accounts, excluding those owed by Walmart, which shall be limited to sixty percent (60%); but only, in each case under this clause (k), to the extent of such excess;

(l) that is owing by any Account Debtor (i) as to which any Insolvency Proceeding has been commenced by or against such Account Debtor; (ii) that has failed, has suspended or ceased doing business, is liquidating, dissolving, or winding up its affairs, (iii) that is not Solvent; (iv) against which the applicable Borrower is unable to bring suit or enforce remedies through judicial process; (v) who is a natural Person, if such Person has died or been declared incompetent in a final, non-appealable judgment by a court of competent jurisdiction binding on such Person; or (vi) that is selling, assigning, or transferring all or substantially all of its assets, unless the obligations of such Account Debtor in respect of such Account are assumed by and assigned to such purchaser, assignee, or transferee;

(m) that arises from a sale on a bill-and-hold, guaranteed sale, sale-or-return, sale-on-approval, Consignment, cash-on-delivery, or similar basis or terms or is due from any credit or charge card company or any Credit Card Processor;

(n) that represents the right to receive progress payments, partial payments or advance billings that are due prior to the completion of performance by the applicable Borrower, but in each case only to the extent thereof;

(o) that is owing by an Account Debtor that is a Sanctioned Person or Sanctioned Country;

(p) that is owing by any Account Debtor that is organized or has its chief executive office, primary business delivery locations, payment centers, or all or substantially all of its assets outside the United States (and, for purposes hereof, but without limitation, Puerto Rico shall be considered as located outside the United States);

(q) that is owing by a Governmental Authority, unless (i) the Account Debtor is the United States or any of its political subdivisions; (ii) Administrative Agent shall have specifically agreed to permit such Accounts to be considered for inclusion as Eligible Accounts; and (iii) the applicable Borrower shall have taken such actions under all applicable assignment of claims laws as Administrative Agent shall have required and in a manner acceptable to Administrative Agent to assign all claims in respect of such Account to Administrative Agent;

(r) as to which the Goods giving rise thereto (i) have not been delivered or provided to the Account Debtor or fully performed, (ii) have not been accepted by the Account Debtor, (iii) are subject to repurchase, (iv) have been returned, rejected, repossessed, lost, or damaged or (v) are or are alleged to constitute infringing Goods or are or are alleged to have been manufactured or sold in a manner that violates the Intellectual Property rights of any Person; or that, in any event, do not represent a final sale to the Account Debtor;

(s) that is evidenced by Chattel Paper or an Instrument of any kind or has been reduced to judgment;

(t) that has been re-dated, extended, compromised, settled or otherwise modified or discounted, except discounts or modifications that are granted in the Ordinary Course of Business and that are reflected in the calculation of the Borrowing Base;

(u) that is comprised of Customer deposits or unapplied cash;

(v) that is not reflected on general ledger or the current, detailed accounts receivables aging of the applicable Borrower;

(w) that constitutes finance charges, late fees and other fees that are unearned;provided, however, that such Account shall be ineligible pursuant to this clause (w) only to the extent of such finance charges, late fees or other unearned fees;

(x) as to which such Borrower or Administrative Agent, in its Permitted Discretion, shall have determined the validity, collectability, or amount thereof to be doubtful for any reason;

(y) with respect to which the Account Debtor is located in a State or other jurisdiction that requires, as a condition to access to the courts of such jurisdiction, that a creditor qualify to transact business, file a business activities report or other report or form, or take one or more other actions, unless (i) the applicable Borrower has so qualified, filed such reports or forms, or taken such actions and, in each case, paid any required fees or other charges, or (ii) such Borrower is permitted by the laws of such State or other jurisdiction to qualify subsequently as a foreign Entity authorized to transact business therein and gain access to such courts without incurring any material cost or delay and such later qualification will cure any bar to access to such courts to enforce payment of such Account;

(z) that is an Account that has been purchased by a factor or other Person or that is subject to purchase (but has not been purchased) pursuant to a factoring arrangement or supply chain finance arrangement; or

(aa) that Administrative Agent otherwise determines not to be Eligible Accounts for purposes hereof in its Permitted Discretion.

“Eligible Assignee” means any Person that meets the requirements to be an assignee of a Lender under **Section 13.1**, subject to any consents and representations, if any, as may be required therein.

“Eligible Credit Card Receivables” means, with respect only to each Borrower’s Credit Card Receivables, the aggregate face amount thereof, net of (i) any returns, rebates, discounts (calculated on the shortest terms), credits, or allowances (that have been or could be claimed by the Account Debtor or any other Person), (ii) any Taxes (including sales, excise, or other taxes), and (iii) any finance or interest charges, or late payment charges, **but excluding therefrom, however,** unless otherwise approved by Administrative Agent, without duplication, each Credit Card Receivable (or, where expressly stated below, any portion thereof):

(a) that is outstanding for more than five (5) Business Days from the date of sale;

(b) that is (i) not subject to a valid, duly perfected, first priority Lien in favor of Administrative Agent (other than (x) non-consensual statutory Liens, (y) junior Liens incurred under the Term Loan Credit Agreement or (z) Liens subject to an intercreditor agreement or Third Party Claimant Agreement on terms satisfactory to Administrative Agent) or (ii) is subject to any other Lien (other than any Permitted Lien);

(c) that is in dispute, is with recourse to the applicable Borrower, or subject to a claim, counterclaim, offset or chargeback (other than offsets for fees and chargebacks of the applicable Credit Card Issuers or Credit Card Processors in the Ordinary Course of Business), in each case, solely to the extent of such dispute, recourse, claim, counterclaim, offset or chargeback;

(d) that is subject to a repurchase obligation by the applicable Borrower in favor of the Credit Card Processor or Credit Card Issuer;

(e) that is due from a Credit Card Issuer or Credit Card Processor of the applicable credit card which is the subject of any bankruptcy or insolvency proceedings;

(f) that is not a valid, legally enforceable obligation of the applicable issuer with respect thereto;

(g) that does not conform in all material respects to all representations, warranties or other provisions herein or in the other Loan Documents relating to Credit Card Receivables;

(h) that is evidenced by "chattel paper" or an "instrument" of any kind unless such "chattel paper" or "instrument" is in the possession of Collateral Agent, and to the extent necessary or appropriate, endorsed to Collateral Agent;

(i) that the Credit Card Processor with respect to such Credit Card Receivable is not obligated to remit the proceeds of such Credit Card Receivable to a Collection Account pursuant to Third Party Claimant Agreement which is in full force and effect;

(j) that (or the underlying contract related thereto) contravenes any material laws or material regulations applicable thereto in any material respect;

(k) that the Credit Card Issuer or Credit Card Processor with respect to such Credit Card Receivable has sent a notice of default and/or notice of its intention to cease or suspend payment to such Borrower in respect of such Credit Card Receivable;

(l) that the applicable Borrower has failed to submit all sales slips, drafts, charges or other reports or materials required by the Credit Card Issuer or Credit Card Processor obligated in respect of such Credit Card Receivable in order for such Borrower to be entitled to payment in respect thereof;

(m) that Administrative Agent has determined in its Permitted Discretion that such Credit Card Receivable is uncertain of collection; or

(n) that Administrative Agent otherwise determines not to be an Eligible Credit Card Receivable, in its Permitted Discretion.

"Eligible Inventory" means, as to Inventory owned only by a Borrower, the value of such Inventory determined on the basis of the lower of its FIFO cost (excluding therefrom any portion of such cost attributable to intercompany profit among Borrowers and their Affiliates) and its market value, excluding, however, therefrom, unless otherwise approved by Administrative Agent, without duplication, any Inventory:

(a) that constitutes work-in-process;

(b) that is (i) not subject to a valid, duly perfected, first priority Lien in favor of Administrative Agent (other than (x) non-consensual statutory Liens, (y) junior Liens incurred under the Term Loan Credit Agreement or (z) Liens subject to an intercreditor agreement or Third Party Claimant Agreement on terms satisfactory to Administrative Agent) or (ii) is subject to any other Lien (other than any Permitted Lien);

(c) as to which any of the covenants, representations, and warranties in this Agreement or the other Loan Documents respecting Inventory shall be untrue, misleading, or in default in any material respect; provided, however, that this clause (c) shall not (i) be deemed a waiver by Administrative Agent, Lenders or Required Lenders of any Default or Event of Default that occurs as a result of any such representation, warranty, or covenant being untrue or misleading, or in default or (ii) limit the ability of Administrative Agent to institute Reserves in connection therewith to the extent provided in this Agreement;

(d) that is on Consignment from i.e., where such Borrower is the Consignee) any seller, vendor, or supplier or subject to any agreement whereby the seller, vendor, or supplier has retained any title to such Inventory or the right to repurchase such Inventory;

(e) that is on Consignment to i.e., where such Borrower is the Consignor) any other Person;

(f) that (in each case, as determined by Administrative Agent in its Permitted Discretion) (i) is not new; (ii) is not in good and saleable condition (including because it is beyond its expiration date); (iii) is damaged, defective, unserviceable, or otherwise unmerchantable; (iv) constitutes returned or repossessed Goods; (v) constitutes obsolete or slow-moving Goods; (vi) as applicable, fails to meet standards of any Governmental Authority or Applicable Law regarding the storage, use, or sale of such Inventory, including the FLSA, or (vii) has been acquired from a Sanctioned Person or Sanctioned Country;

(g) that is subject to any negotiable Document, unless such negotiable Document has been delivered to Administrative Agent with all necessary endorsements and other Documents, free and clear of all Liens except those permitted by clause (b) above;

(h) that (i) is subject to any License with any Third Party Claimant that limits or restricts or is likely to limit or restrict any Borrower's or Administrative Agent's right to sell or otherwise dispose of such Inventory unless (A) such Third Party Claimant has entered into a Third Party Claimant Agreement or (B) if Administrative Agent determines in its Permitted Discretion to do so in lieu of a Third Party Claimant Agreement, Administrative Agent has instituted a Reserve in an amount determined by Administrative Agent in its Permitted Discretion, or (ii) constitutes infringing Goods, or that has been manufactured or sold in a manner that violates the Intellectual Property rights of any Person;

(i) that is not located at a Permitted Location in the continental United States;

(j) that is located at a Permitted Location not owned and Controlled by such Borrower or another Credit Party that has executed a Third Party Claimant Agreement, unless (i) Administrative Agent has received from the Person owning or in Control of such Permitted Location a Third Party Claimant Agreement or (ii) if Administrative Agent determines in its Permitted Discretion to do so in lieu of a Third Party Claimant Agreement, Administrative Agent has instituted a Reserve in an amount determined by Administrative Agent in its Permitted Discretion;

(k) that constitutes In-Transit Inventory (Foreign);

(l) that constitutes In-Transit Inventory (Domestic) exceeding five percent (5%) of the total of a Borrower's or Borrowers' (collectively) Eligible Inventory, but only to the extent of such excess;

(m) that consists of any packaging or shipping materials, supplies, spare parts, catalysts, catalogs, labels, samples, display items or floor models, tooling, or promotional materials; or

(n) that Administrative Agent otherwise determines not to be Eligible Inventory, in its Permitted Discretion.

“Eligible Inventory (Coffee)” means any Inventory owned only by a Borrower that satisfies the definition of Eligible Inventory where the applicable Inventory consists of (a) whole coffee beans or ground coffee beans for brewing or (b) k-cups (or similar instant coffee pods).

“Eligible Investment Grade Account” means any Account that satisfies the definition of Eligible Accounts where the applicable Account Debtor is also an Investment Grade Account Debtor.

“Eligible Non-Investment Grade Account” means any Account that satisfies the definition of Eligible Accounts where the applicable Account Debtor is not also an Investment Grade Account Debtor.

“Eligible Real Property” means the Real Property located at 621 Parktower Road, Manchester, TN 37355 and 1144 S. 500 W., Salt Lake City, Utah 84101.

“Enforcement Action” means any action to collect any Obligations or enforce any Loan Document or to realize upon any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, or otherwise).

“Entity” means any Person that is not a natural Person.

“Environmental Laws” means any law, regulation, or rule now or in the future enacted or amended relating to protection of the environment or natural resources or human health or safety (with respect to exposure to Hazardous Materials) or relating to manufacture, possession, presence, use, sale, labeling, registration, generation, transportation, treatment, storage, emission, management, disposal, discharge, release, threatened discharge or release, abatement, removal, remediation, processing, or handling of or exposure to a Hazardous Material, including the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.* and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.* (with respect to exposure to Hazardous Materials); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right to Know Act, the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 *et seq.*, and Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*, and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*

“Environmental Notice” means a notice in writing from any Governmental Authority or other Person (including any Credit Party) of any material possible non-compliance with, investigation of a possible violation of, Adverse Proceeding relating to, or potential fine or liability under any Environmental Law or with respect to any Environmental Release or Hazardous Materials, including any complaint, summons, citation, order, claim, demand, or request for investigation or remediation.

“Environmental Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the migration of any Hazardous Material through the air, soil, surface water or groundwater.

“Equipment” shall mean (x) any “equipment” as such term is defined in Article 9 of the UCC and in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings, appliances, furniture, fixtures, tools, and vehicles now or hereafter owned by any Grantor in each case, regardless of whether characterized as equipment under the UCC and (y) any and all additions, substitutions and replacements of any of the foregoing and all accessions thereto, wherever located, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefore, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

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

“ERISA Affiliate” means, as applied to any Person, (a) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that Person is a member; (b) any trade or business (whether or not incorporated) that is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which that Person is a member; and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member.

“ERISA Event” means (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which notice to the PBGC has been waived by regulation); (b) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code), the failure to make by its due date any minimum required contribution or any required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure to make by its due date any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal from any Pension Plan with two (2) or more contributing sponsors or the termination of any such Pension Plan, in either case resulting in material liability pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition reasonably likely to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability pursuant to Section 4062(a) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA, each case reasonably likely to result in material liability; (g) the withdrawal of any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if such withdrawal is reasonably likely to result in material liability, or the receipt by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4241 or 4245 of ERISA, or that it is in “critical” or “endangered” status within the meaning of Section 305 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA, if such reorganization, insolvency or termination is reasonably likely to result in material liability; (h) the imposition of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Pension Plan if such fines, penalties, taxes or related charges are reasonably likely to result in material liability; (i) the assertion of a material claim (other than routine claims for benefits and funding obligations in the Ordinary Course of Business) against any Pension Plan other than a Multiemployer Plan or the assets thereof, or against any Person in connection with any Pension Plan such Person sponsors or maintains reasonably likely to result in material liability; (j) receipt from the Internal Revenue Service of a final written determination of the failure of any Pension Plan intended to be qualified under Section 401(a) of the Code to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any such plan to qualify for exemption from taxation under Section 501(a) of the Code; or (k) the imposition of a lien pursuant to Section 430(k) of the Code or pursuant to Section 303(k) or 4068 of ERISA.

“Erroneous Payment” shall have the meaning set forth in **Section 12.10(d)(i)**.

“Erroneous Payment Deficiency Assignment” shall have the meaning set forth in **Section 12.10(d)(iv)**.

“Erroneous Payment Impacted Class” shall have the meaning set forth in **Section 12.10(d)(iv)**.

“Erroneous Payment Return Deficiency” shall have the meaning set forth in **Section 12.10(d)(iv)**.

“Erroneous Payment Subrogation Rights” shall have the meaning set forth in **Section 12.10(d)(iv)**.

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

“Event of Default” shall have the meaning set forth in **Section 11.1**.

“Excess Availability” means, at any time of determination, the amount, if any, by which (a) the Loan Limit exceeds (b) the Aggregate Revolving Obligations.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Account” means any Deposit Account or Securities Account now or hereafter owned by any Credit Party that is used solely by such Credit Party (a) as a payroll account so long as such payroll account is a zero balance account, (b) as a petty cash account so long as the aggregate amount on deposit in all petty cash accounts of all Credit Parties does not exceed \$250,000 at any one time for all such deposit accounts combined, (c) to hold amounts required to be paid in connection with workers compensation claims, unemployment insurance, social security benefits and other similar forms of governmental insurance benefits, (d) to hold amounts which are required to be pledged or otherwise provided as security as required by law or pension requirement, and (e) the Term Loan Proceeds Account.

“Excluded Bank Product Obligations” means Swap Obligations and any Bank Product Obligations that are secured by collateral pursuant to agreements, instruments or documents other than the Loan Documents that will continue to secure such Bank Product Obligations after Payment in Full.

“Excluded Collateral” shall have the meaning set forth in the Security Agreement.

“Excluded Swap Obligation” means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of any Guarantee of such Credit Party of, or the grant under a Loan Document by such Credit Party of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Credit Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to **Section 5.7** and any and all guaranties of such Credit Party’s Swap Obligations by other Credit Parties) at the time the Guarantee of such Credit Party, or grant by such Credit Party of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Agreements for which such Guarantee or Lien becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Principal Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrowers under **Section 14**) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 14.3**, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with **Section 14.3(g)**, and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Letter of Credit” means that certain Agreement for Irrevocable Standby Letter of Credit, dated as of September 2, 2023, by and between Black Rifle Coffee Company LLC and Regions Bank, for the benefit of the City of South Jordan, UT, with a balance of \$27,725.50 as of the Closing Date.

“Extraordinary Expenses” means all costs, expenses, or advances that Administrative Agent may incur during a Default or Event of Default or during the pendency of an Insolvency Proceeding of a Credit Party, including those relating to (a) any audit, inspection, field examination, repossession, storage, repair, appraisal, insurance, manufacture, preparation, or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Administrative Agent, any Lender, any Credit Party, any representative of creditors of a Credit Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority, or avoidability of Administrative Agent’s or any other Secured Party’s Liens with respect to any Collateral), Loan Documents, Letters of Credit, or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Administrative Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges, or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any amendment, restatement, amendment and restatement, supplement, modification, waiver, consent, workout, restructuring, or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses, and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees (limited to the documented fees and expenses of one (1) outside counsel to PNC, in its capacities as Administrative Agent and a Lender, and, in the case of an actual conflict of interest, one (1) additional counsel to all relevant conflicted parties (taken as a whole) (and, if necessary, of one (1) local counsel to PNC in any relevant jurisdiction) incurred in connection with structuring, documenting, execution, delivery and administration of this Agreement and the other Loan Documents)), appraisal fees, brokers’ fees and commissions, auctioneers’ fees and commissions, accountants’ fees, turnaround and financial consultants and experts’ fees, environmental study fees and remedial response costs, wages and salaries paid to employees of any Credit Party or independent contractors in liquidating any Collateral, and travel expenses incurred in relation thereto.

“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), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements in respect thereof (and any legislation, regulations or other official guidance pursuant to, or in respect of, such intergovernmental agreements).

“FDPA” means the Flood Disaster Protection Act of 1973, as amended, including all requirements imposed relative thereto by the National Flood Insurance Program.

“Federal Funds Rate” means for any day the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1% announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the “Effective Federal Funds Rate” or “Federal Funds Rate” as of the date of this Agreement; provided that if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the “Effective Federal Funds Rate” or “Federal Funds Rate” for such day shall be the Federal Funds Rate for the last day on which such rate was announced. Notwithstanding the foregoing, if the Federal Funds Rate as determined under any method above would be less than zero percent (0.00%), such rate shall be deemed to be zero percent (0.00%) for purposes of this Agreement.

“Fee Letter” means any fee letter agreement (or series thereof) at any time existing made between or among PNC and Borrowers (or Borrower Representative), and/or Parent concerning any fees or charges payable to PNC in respect of the transactions contemplated under this Agreement, whether in its capacity as Lender, Administrative Agent, Collateral Agent or otherwise.

“FIFO” means the “first in, first out” method of accounting for the cost of Inventory under GAAP.

“Financial Covenant Cure Deadline” shall have the meaning set forth in **Section 11.7**.

“Financial Covenant Default” shall have the meaning set forth in **Section 11.7**.

“Financial Covenant Equity Cure” shall have the meaning set forth in **Section 11.7**.

“Financial Covenants” means, collectively, all the financial covenants set forth in **Section 10**.

“Fiscal Year,” “Fiscal Quarter,” and “Fiscal Month” mean each of Credit Parties’ fiscal years, fiscal quarters, and fiscal months, as applicable.

“Fixed Charge Coverage Ratio” means, at any time of determination and determined with respect to any fiscal period, the ratio of, without duplication, (a) the sum of (i) Consolidated EBITDA for such period; minus (ii) Unfunded Capital Expenditures paid in cash in such period; minus (iii) Consolidated Cash Taxes Paid and Permitted Tax Distributions, in each case made in cash during such period; to (b) the sum of (i) Consolidated Interest Paid on Consolidated Funded Debt for such period (including, without limitation, with respect to the Term Loan Debt and the Scheduled Noteholder Debt); plus (ii) all regularly scheduled payments of principal made or required to be made in cash during such period with respect to Consolidated Funded Debt but only to the extent that such prepayments or repayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of such Funded Debt with the proceeds of long-term Debt (other than revolving Debt) plus (iii) any payment of a dividend or other distribution in cash permitted hereunder on account of any Equity Interests issued by any of the Tested Companies.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Term SOFR Rate, or if no floor is specified, zero.

“FLSA” means the Fair Labor Standards Act of 1938.

“Foreclosed Borrower” shall have the meaning set forth in **Section 5.7(h)**.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than the laws of the United States or any State or district thereof.

“Foreign Plan” means any employee benefit plan or arrangement (a) maintained or contributed to by any Credit Party or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of any Credit Party or Subsidiary.

“Foreign Subsidiary” means a Subsidiary that is a “controlled foreign corporation” under Section 957 of the Code.

“Foreign Subsidiary Holdco” means any direct or indirect Subsidiary of Parent that has no material assets (directly or indirectly) other than, for U.S. federal income tax purposes, equity interests (or equity and indebtedness (of the same entity)) in one or more Foreign Subsidiaries.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to LC Issuer, such Defaulting Lender’s Pro Rata Share of outstanding LC Obligations with respect to Letters of Credit issued by LC Issuer other than LC Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to Swing Line Lender, such Defaulting Lender’s Pro Rata Share of outstanding Swing Line Loans made by Swing Line Lender other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“Funded Debt” means, with respect to any Person and without duplication as to such Person, (a) Debt that arises in respect of money borrowed by such Person; (b) Debt evidenced by bonds, notes, debentures or similar instruments; (c) Debt that accrues interest or is a type upon which interest or finance charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business); (d) Debt representing reimbursement obligations of such Person with respect to letters of credit; (e) Debt representing reimbursement obligations of such Person with respect to bankers’ acceptances; (f) Debt representing the Swap Termination Value of all outstanding Swap Agreements of such Person; (g) Debt representing all mandatory obligations of such Person to purchase, redeem, retire, defease, or otherwise make any payment in respect of any Disqualified Equity Interest of such Person; (h) Debt that was issued or assumed by such Person as full or partial payment for Property or services (other than an account payable to a trade creditor incurred in the Ordinary Course of Business of such Person); (i) Debt representing the principal portion of all rental obligations of such Person under any Capital Lease, synthetic lease or similar off-balance sheet financing where such transaction is considered borrowed money Debt for tax purposes but is classified as an operating lease in accordance with GAAP; (j) Earn-Outs constituting Debt, to the extent earned, due and payable; and (k) Guarantees by such Person of any Debt of the foregoing types described in clauses (a) through (j) above owing by another Person.

“GAAP” means, subject to the limitations on the application thereof set forth in **Section 1.2**, generally accepted accounting principles in effect in the United States from time to time.

“Governing Body” means (a) in the case of a corporation, its board of directors or shareholders, as applicable, (b) in the case of a limited liability company, its managers or members, as applicable, (c) in the case of a limited partnership, its general partner(s), and (d) in any other case, the Person(s) that Control(s) such Person.

“Governmental Approvals” means all authorizations, consents, approvals, licenses, and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

“Governmental Authority” means any federal, state, municipal, foreign, or other governmental department, agency, commission, board, bureau, court, tribunal, instrumentality, political subdivision, or other Entity or officer exercising executive, legislative, judicial, regulatory, taxing or administrative powers or functions for or pertaining to any government or court, in each case whether associated with the United States, a state, district or territory thereof, or a foreign Entity or government.

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the Guaranteeing Person in Good Faith. The term “Guarantee” when used as a verb shall have a corresponding meaning.

“Guarantor Payment” shall have the meaning set forth in **Section 5.7(c)(i)**.

“Guarantors” means (a) each Borrower, as to each other Borrower, pursuant to the operation and effect of **Section 5.7(a)**, (b) each Subsidiary that executes a Guaranty pursuant to **Section 8.14**, and (c) each other Person (including any Credit Party) that at any time Guarantees payment or performance of any Obligations pursuant to a Guaranty. Notwithstanding the foregoing, no Immaterial Subsidiary, no Foreign Subsidiary, and no Foreign Subsidiary Holdco shall be required to become or remain a Guarantor.

“Guaranty” means each Guaranty (including the Guaranty set forth in **Section 5.7(a)**) executed by a Guarantor in favor of Administrative Agent in respect of the payment or performance of any Obligations.

“Hazardous Materials” means those substances, chemicals, wastes and/or other materials that are listed, defined or otherwise identified as “hazardous” or “toxic” under any Environmental Law or otherwise governed or regulated under any Environmental Law, or that are otherwise hazardous or toxic to human health or the environment, including any “hazardous waste,” as defined under 40 C.F.R. Parts 260-270, and any gasoline or petroleum (including crude oil or any fraction thereof), asbestos or polychlorinated biphenyls.

“Highest Lawful Rate” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under Applicable Law relating to any Lender that is currently in effect or, to the extent allowed under such Applicable Law, that may hereafter be in effect and that allows a higher maximum non-usurious interest rate than Applicable Law now allows.

“Historical Financial Statements” means the following, each in form and substance satisfactory to Administrative Agent: (a) the audited financial statements of Holdings and its Subsidiaries on a Consolidated basis for the Fiscal Year ended December 31, 2022; (b) the unaudited financial statements of Holdings and its Subsidiaries on a Consolidated basis for the Fiscal Quarter ended March 31, 2023; and (c) the interim unaudited financial statements of Holdings and its Subsidiaries on a Consolidated basis for the Fiscal Months ended May 31, 2023 and June 30, 2023.

“Holdings” shall mean BRC Inc., a Delaware public benefit corporation.

“Immaterial Subsidiary” means, as of any date of determination, any Subsidiary that (a) when aggregated with all other Immaterial Subsidiaries, during the most recently ended twelve (12) Fiscal Months did not have total assets in excess of two and one-half of one percent (2.5%) of the consolidated total assets of Parent and its Subsidiaries as of such date, (b) when aggregated with all other Immaterial Subsidiaries, during the most recently ended twelve (12) Fiscal Months did not have revenues in excess of two and one-half of one percent (2.5%) of the consolidated revenues of the Parent and its Subsidiaries for such period, (c) owns no Intellectual Property, (d) owns no Real Estate, (e) owns no Equity Interest in any other Person (other than any other Immaterial Subsidiary), and (f) is not party to any Material Contract.

“Increasing Lender” shall have the meaning set forth in **Section 2.1(f)**.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in the preceding clause (a), Other Taxes.

“Indemnitee Obligations” means all payment obligations (whether for any loss, damage, cost or expense, or otherwise) owing to Indemnitees in such capacity to the extent arising under this Agreement or any other Loan Document.

“Indemnitees” means, individually and collectively, any and all Administrative Agent Indemnitees, Lender Indemnitees, LC Issuer Indemnitees, and PNC Indemnitees; and, for each of them, without limitation, all Related Parties.

“Insolvency Proceeding” means any case or proceeding commenced by or against a Person under any state, federal, or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, Debt adjustment or other Debtor Relief Law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator, or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

“Intellectual Property” means any and all intellectual property and similar property, or interests in property in any jurisdiction throughout the world, including the following (a) patents, industrial designs, and utility models and applications for any of the foregoing, including all provisionals, divisionals, continuations, continuations-in-part, requests for continuing examination, reissues, reexaminations, renewals and extensions of any of the foregoing and all rights to claim priority of any of the foregoing; (b) works of authorship, websites, copyrights, mask work rights, database rights, and design rights (all whether registered or unregistered); (c) trademarks, trademark applications, service marks, trade names, certification marks, trade dress, logos, slogans, tag lines, fictitious business names, uniform resource locators, internet domain names, social media accounts and handles, and all other source or business identifiers or designators of origin (whether registered or unregistered), registrations and applications, for registration of, and renewals and extensions of, any of the foregoing, and all common law rights in and goodwill associated with any of the foregoing; (d) rights of publicity; (e) trade secrets and other confidential or proprietary information and data, including whether or not patentable or reduced to practice), invention disclosures, ideas, developments, improvements, designs, drawings, algorithms, source code, methods, tools, processes, techniques, formulae, research and development, compilations, compositions, manufacturing processes, production processes, devices, specifications, reports, analyses, data, data analytics, supplier lists, pricing information, cost information, business plans, business proposals, marketing plans, and marketing proposals, customer lists, know-how, recipes; (f) computer software, firmware, databases, data collections and related documentation and materials, including source code, object code, code repositories, development tools, application programming interfaces, user interfaces, architecture, files, manuals, programmers’ notes, derivative works, foreign language versions, fixes, upgrades, updates, enhancements, current and prior versions and releases; (g) all embodiments or fixations thereof and all related documentation, applications, registrations, and franchises; (h) all licenses or other rights to use any of the foregoing; and (i) all books and records relating to the foregoing, together with (but not exclusive of) all (i) registrations and applications for the foregoing, (ii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including, without limitation, damages, claims and payments for past, present or future infringements or other violations thereof, (iii) rights to sue for past, present and future infringements and other violations thereof, and (iv) rights corresponding, equivalent, or similar thereto throughout the world, whether statutory or common law, whether registered or unregistered, and whether established or registered in the United States or any other country or any political subdivision thereof.

“Intercompany Debt” means Debt owing at any time or from time to time by any Credit Party or Subsidiary to another Credit Party or Subsidiary.

“Intercreditor Agreement” means (i) the Intercreditor Agreement, dated as of the Third Amendment Effective Date, among Administrative Agent and Term Loan Agent and acknowledged by Borrowers and the other Credit Parties, or Borrower Representative on their collective behalf, to be in form and substance satisfactory to Administrative Agent setting forth the agreements of such parties in respect of their respective Liens and Debt claims on Borrowers and the other Credit Parties (the “Term Loan Intercreditor Agreement”), and (ii) any other intercreditor agreement made among Administrative Agent and one or more holders of any Debt owing by Borrowers (or any agent therefor), and acknowledged by Borrowers and the other Credit Parties, or Borrower Representative on their collective behalf, to be in form and substance satisfactory to Administrative Agent, setting forth the agreements of such parties in respect of their respective Liens and Debt claims on Borrowers and the other Credit Parties.

“Interest Payment Date” means with respect to (a) any Base Rate Loan and any Swing Line Loan, (i) the first day of each calendar month, commencing on the first such date to occur after the Closing Date and (ii) the Commitment Termination Date, and the final maturity date of any additional such Loan; and (b) any Term SOFR Rate Loan, (i) the last day of each Interest Period applicable to such Loan; provided, in the case of each Interest Period of longer than three (3) months, “Interest Payment Date” shall also include each date that is three (3) months, or an integral multiple thereof, after the commencement of such Interest Period and (ii) the Commitment Termination Date, and the final maturity date of any additional such Loan.

“Interest Period” means, in connection with a Term SOFR Rate Loan, an interest period of one (1), three (3) or six (6) months, as selected by Borrower Representative in the applicable Notice of Borrowing or Notice of Conversion/Continuation, (a) initially, commencing on the funding date or Conversion/Continuation Date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iii) of this definition, end on the last Business Day of a calendar month; and (iii) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Stated Revolving Commitment Termination Date.

“Interest Rate Determination Date” means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

“In-Transit Inventory (Domestic)” means the Inventory of any Borrower that is in-transit from one Permitted Location in the continental United States to another Permitted Location in the continental United States.

“In-Transit Inventory (Foreign)” means the Inventory of any Borrower that is in-transit from a location outside of the continental United States to a Permitted Location inside the continental United States.

“Inventory” shall have the meaning set forth in the UCC and, in any event, includes (a) all Goods intended for sale, lease, display, or demonstration and (b) all work in process and all raw materials and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease, or furnishing of such Goods, or Goods otherwise used or consumed in a Borrower’s business (but excluding Equipment), all regardless whether any of the foregoing at any time constitutes Eligible Inventory.

“Inventory Report” shall have the meaning set forth in **Section 8.6(a)(ii)**.

“Inventory Reserve” means an amount determined from time to time by Administrative Agent in its Permitted Discretion as a Reserve for changes in the merchantability of any Eligible Inventory in the Ordinary Course of Business or such other factors that may negatively impact the value of Eligible Inventory, including changes in salability, obsolescence, seasonality, theft, shrinkage, imbalance, changes in composition or mix, markdowns, vendor chargebacks, damage, or, if such Inventory consists of Goods, the price of which is ascertainable from, published by, or quoted by one or more recognized exchanges, any decrease in any such exchange’s price therefor.

“Investment” means, with respect to any Person, (a) any loan, advance, or extension of credit by such Person to, or any Guarantee with respect to the Equity Interests, Funded Debt, or other obligations of, or any contributions to the capital of, any other Person, (b) any ownership, purchase, or other acquisition by such Person of any Equity Interests of any other Person, other than any Acquisition or (c) any Acquisition. In determining the aggregate amount of Investments outstanding at any particular time, (a) the amount of any Investment represented by a Guarantee shall be the lesser of (i) the stated or determinable amount of the Debt or other obligation Guaranteed and (ii) the maximum amount for which the guarantor may be liable pursuant to the terms of the instrument embodying such Guarantee (and, if such amounts are not determinable, the maximum reasonably anticipated liability in respect thereof, as determined by the Person providing such Guarantee in Good Faith); (b) there shall be deducted in respect of each such Investment any amount received as a return of principal or capital (including by repurchase, redemption, retirement, repayment, liquidating, or other dividend or distribution); (c) there shall not be deducted in respect of any Investment any non-cash amounts received as earnings on such Investment, whether as dividends, interest, or otherwise; (d) there shall not be deducted from or added to the aggregate amount of Investments any decrease or increases, as the case may be, in the market value thereof; and (e) the amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, forgiveness or conversion to equity of Debt, or write-ups, write-downs, or write-offs with respect to such Investment.

“Investment Grade Account Debtor” means any Account Debtor (other than the United States of America or any other governmental Entity) whose long term unsecured and unguaranteed debt is rated at least “BBB-” by Standard & Poor’s Ratings Services (or any successor thereto) or at least “Baa3” by Moody’s Investors Service, Inc. (or any successor thereto).

“Investment Property” shall have the meaning set forth in the UCC and, in any event, includes the following (regardless whether classified as “investment property” under the UCC): (a) all of each Credit Party’s right, title and interest in and to all of the Equity Interests now owned or hereafter acquired by such Credit Party, regardless of class or designation, in any Person, including in each of the other Credit Parties, and all substitutions therefor and replacements thereof, all Proceeds thereof and all rights relating thereto, also including any certificates representing the Equity Interests, the right to receive any certificates representing any of the Equity Interests, all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof and the right to receive all dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and all cash, instruments, and other property from time to time received, receivable, or otherwise distributed in respect of or in addition to, in substitution of, on account of, or in exchange for any or all of the foregoing; (b) all of each Credit Party’s rights, powers and remedies under any limited liability company in which such Credit Party is a member; and (c) all of each Credit Party’s rights, powers and remedies under any partnership agreement in which such Credit Party is a general (or limited) partner.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc., or such later version thereof as may be in effect at the time of issuance of such Letter of Credit, if and to the extent such later version has been approved for use by the LC Issuer.

“Joinder Agreement” means a joinder agreement in the form of Exhibit G or such other form as or such other form as may be requested or approved by Administrative Agent from time to time, in which either: (a) a Subsidiary shall become a Borrower or a Credit Party or (b) an Obligor that is not a Subsidiary shall become a Credit Party, in each case pursuant to **Section 8.14**.

“Judgment Currency” shall have the meaning set forth in **Section 15.22**.

“Jurisdiction State” means the State of New York.

“LC Application” means an application by Borrower Representative to LC Issuer for issuance of a Letter of Credit, in form and substance satisfactory to LC Issuer and Administrative Agent.

“LC Conditions” means each of the following conditions precedent with respect to the issuance of a Letter of Credit, unless and except to the extent otherwise approved by LC Issuer and, as applicable, Administrative Agent: (a) each of the conditions precedent to the issuance of such Letter of Credit set forth in **Section 6** shall have been satisfied; (b) LC Issuer shall have received an LC Request, an LC Application, and such other instruments, documents, or agreements as LC Issuer customarily requires for the issuance of letters of credit of similar purpose and amount, in each case, at least eight (8) Business Days before the requested date of issuance of such Letter of Credit (or such shorter period as LC Issuer may permit in writing in its discretion); (c) after giving effect to the issuance of such Letter of Credit, the LC Obligations shall not exceed the LC Sublimit and no Over Advance shall exist; (d) the expiration date of such Letter of Credit shall be, unless otherwise approved by Administrative Agent, (i) in the case of a standby Letter of Credit, no more than three hundred sixty-five (365) days from issuance; (ii) in the case of a documentary Letter of Credit, no more than one hundred twenty (120) days from issuance; and (iii) for all Letters of Credit, at least thirty (30) days before the Stated Revolving Commitment Termination Date; (e) the date on which such Letter of Credit is to be issued shall be at least thirty (30) days before the Stated Revolving Commitment Termination Date; (f) such Letter of Credit and payments thereunder shall be denominated in Dollars; (g) the purpose, form and substance of such Letter of Credit shall be acceptable to each of Administrative Agent and LC Issuer in their respective discretion; and (h) in the event that any Lender is at such time a Defaulting Lender, LC Issuer shall have entered into arrangements satisfactory to LC Issuer (in its discretion) with Borrowers or such Defaulting Lender to eliminate LC Issuer’s Fronting Exposure with respect to such Lender (after giving effect to **Section 4.2(a)(iv)** and any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender’s Pro Rata Share of the outstanding amount of LC Obligations in a form, manner and substance satisfactory to Administrative Agent in its discretion.

“LC Documents” means all documents, instruments, certificates and agreements (including LC Requests and LC Applications) delivered by any Borrower, Borrower Representative or any other Person to LC Issuer or Administrative Agent in connection with the issuance, amendment, extension or renewal of, or payment under, any Letter of Credit.

“LC Issuer” means any of PNC or an Affiliate of PNC, together with its successors and permitted assigns acting in such capacity.

“LC Issuer Indemnitees” means LC Issuer and its Related Parties.

“LC Obligations” means, at any time, the sum of (a) the maximum amount available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referenced therein, plus (b) the aggregate amount of all drawings under Letters of Credit that have occurred but have not been reimbursed by Borrowers or otherwise in accordance herewith and with the LC Documents. For all purposes of this Agreement, (i) amounts available to be drawn under Letters of Credit will be calculated as provided in **Section 2.4(a)(v)**, and (ii) if a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“LC Request” means each request for issuance of a Letter of Credit provided by Borrower Representative to Administrative Agent and LC Issuer, in form and substance satisfactory to Administrative Agent and LC Issuer.

“LC Sublimit” means, as of any date of determination, the lesser of (a) \$7,500,000 and (b) the aggregate unused amount of the Revolving Commitments then in effect.

“Lender Indemnitees” means the Lenders and each of their respective Related Parties.

“Lenders” shall have the meaning set forth in the preamble to this Agreement and, in any event, further includes (a) Swing Line Lender in its capacity as a provider of Swing Line Loans, (b) Administrative Agent in its capacity as a maker of Protective Advances, and (c) and any other Person who hereafter becomes a “Lender” pursuant to an Assignment Agreement. The initial Lenders are identified on the signature pages hereto and are set forth on Appendix A hereto.

“Lending Office” means, with respect to any Lender, the office designated by such Lender as its “Lending Office” as set forth on Appendix B hereto at the time it becomes party to this Agreement or thereafter by notice to Administrative Agent and Borrower Representative.

“Letter of Credit” means any standby or documentary letter of credit issued by LC Issuer for the account of a Borrower.

“Letter of Credit Fee” has the meaning set forth in **Section 3.2(c)**.

“License” means any license or agreement under which a Credit Party is authorized to use any Intellectual Property in connection with (a) any development, manufacture, marketing, distribution, disposition, or other exploitation of Collateral, (b) the provision of any service or (c) any other use of Property or the conduct of its business.

“Lien” means any lien (whether statutory, by contract, under common law or otherwise), mortgage, deed of trust, deed to secure debt, pledge, hypothecation, security interest, trust arrangement, security deed, financing lease, license, covenant not to sue, covenant not to assert, collateral assignment, encumbrance, Consignment, conditional sale or title retention agreement, or any other interest in Property designed to secure the repayment or performance of any obligation, whether arising by agreement or under any statute or law or otherwise. Without limitation of the foregoing, in the case of Real Estate, or interests therein, the term “Lien” also extends to and includes exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting such Real Estate.

“Liquidity” means the sum of (a) Excess Availability, plus (b) until the Availability Block Release Date, the Availability Block, plus (c) unencumbered (other than Liens (x) in favor of the Secured Parties and (y) in favor of Term Loan Agent) and unrestricted cash and Cash Equivalents (excluding, in each case, any cash that is in an Excluded Account or any proceeds of a Financial Covenant Equity Cure) maintained (x) with PNC or (y) in a Deposit Account, Commodities Account or Securities Account at a Permitted Third Party Bank and, at any time after the sixtieth (60th) day following the Closing Date, subject, in each case, to an Article 9 Control Agreement in favor of Administrative Agent and Term Loan Agent and, in each case, not included in the calculation of the Borrowing Base.

“Loan” means a Revolving Loan, and, as applicable, the Term SOFR Rate Loans and Base Rate Loans comprising such Loans.

“Loan Documents” means this Agreement, any Fee Letter, each Note, the Security Agreement, each Financing Statement, each other Security Document, each Guaranty, LC Document, Third Party Claimant Agreement, Collateral Disclosure Certificate, any Auto Borrow Agreement, any Subordination Agreement in respect of any Subordinated Debt, any Intercreditor Agreement, Borrowing Base Certificate, Compliance Certificate, Assignment Agreement, and any and all other documents, instruments, agreements, certificates, and Schedules executed and delivered by any Credit Party pursuant to or in connection herewith or with any other Loan Document, or the transactions contemplated herein or therein, whether now existing or hereafter arising (but, in any event, specifically excluding any Bank Product Agreement unless, by its express terms (or equivalent language), it is deemed to be a “Loan Document” hereunder), together with all exhibits, schedules, annexes, addenda, and other attachments thereto, in each case, as the same may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time.

“Loan Limit” means, as at any date of determination, the lesser of (a) the Borrowing Base (based on the then most recent Borrowing Base Certificate delivered to Administrative Agent by Borrowers (adjusted for any declines or increases in Reserves established by Administrative Agent)), and (b) an amount equal to (i) the Revolving Commitments in effect on such date, minus (ii) from the Closing Date through and including the Availability Block Release Date, the Availability Block, minus (iii) Reserves determined by Administrative Agent from time to time in its Permitted Discretion.

“Loan Year” means each twelve-month period commencing on the Closing Date and ending on each anniversary of the Closing Date.

“Loss” means, with respect to any Property, (a) the loss, theft, damage, or destruction thereof or other casualty with respect thereto or (b) the condemnation or taking by eminent domain thereof by any Governmental Authority.

“Margin Stock” shall have the meaning set forth in Regulation U of the Board of Governors.

“Material Adverse Effect” means the effect of any event, circumstance or condition that, taken alone or in conjunction with other events, circumstances or conditions, has or would reasonably be expected to have a material adverse effect on (i) the business, operations, Properties, or condition (financial or otherwise) of the Credit Parties taken as a whole, (ii) the value of the Collateral taken as a whole, (iii) the legality, binding effect or enforceability of any Loan Documents, (iv) the validity or priority of Administrative Agent’s Liens on any Collateral, (v) the ability of the Credit Parties taken as a whole to pay or perform any obligations under the Loan Documents, including repayment of any Obligations, or (vi) the ability of Administrative Agent, any Lender or any Secured Party to enforce or collect any Obligations or to collect or otherwise realize upon any Collateral or any other right, remedy or Claim arising hereunder, under any other Loan Document or under Applicable Law.

“Material Contract” means an agreement to which any Credit Party is a party (other than the Loan Documents) that either (a) constitutes one of its Organizational Documents; or (b) governing (i) any Funded Debt in an outstanding amount exceeding the Threshold Amount, including, but not limited to, the Term Loan Debt, (ii) Capital Leases having an outstanding amount exceeding the Threshold Amount, (iii) operating leases with aggregate annual rentals exceeding the Threshold Amount, (iv) the sale or purchase of any material portion of goods or services, or any Property, by or to any Credit Party the breach, termination, cancellation or nonperformance of which, or the failure to renew which, would have, or would reasonably be expected to have, a Material Adverse Effect, (v) any License the breach, termination, cancellation or nonperformance of which, or the failure to renew which, would have, or would reasonably be expected to have, a Material Adverse Effect, (vi) the employment of any executive officer of any Credit Party providing annual compensation exceeding the Threshold Amount, or (vii) any Acquisition, including in respect of any Earn-Outs; (c) is a non-compete agreement; (d) is made to, with or in favor of an Affiliate other than a Credit Party and involves annual payments to such Affiliate exceeding the Threshold Amount; or (e) in addition to those agreements specified in clauses (a) through (d) above, is an agreement the breach, termination, cancellation or nonperformance of which, or the failure to renew which, would have, or would reasonably be expected to have, a Material Adverse Effect.

“Material Transfers Prohibition” shall have the meaning set forth in **Section 9.4**.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Mortgage” shall mean collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by Borrowers in favor or for the benefit of Administrative Agent on behalf of the Secured Parties creating and evidencing a Lien on the Real Estate, in form and substance acceptable to Administrative Agent, with such modifications to terms and provisions as may be required by the applicable laws of the relevant jurisdiction (to ensure the recordability and efficacy in the county and state in which the applicable Mortgage Property is located), and any other mortgages executed and delivered pursuant to Section 8.15, in each case, as the same may from time to time be amended, restated, amended and restated, supplemented, or otherwise modified.

“Mortgage Policy” means the extended coverage title insurance policy (or equivalent in the state in which the Real Estate is located) issued by a nationally recognized title insurance company covering such interest in the Mortgaged Property in an amount not less than the fair market value of such Mortgaged Property (or such lesser amount as shall be specified by Administrative Agent) insuring, subject to the Term Loan Intercreditor Agreement, the first priority Lien of each such Mortgage as a valid Lien on the property described therein, free of any other Liens, together with such endorsements as Administrative Agent may reasonably request and in form and substance reasonably satisfactory to Administrative Agent.

“Mortgaged Property” shall mean Real Estate of Borrowers encumbered by a Mortgage in favor of Administrative Agent for the benefit of the Secured Parties.

“Multiemployer Plan” means any “multiemployer plan” as defined in Section 3(37) of ERISA that is sponsored, maintained or contributed to by, or required to be contributed to by, any Credit Party or any of its ERISA Affiliates or with respect to which any Credit Party or any of its ERISA Affiliates previously sponsored, maintained or contributed to or was required to contribute to, and still has liability.

“Net Proceeds (Asset Dispositions)” means, in connection with any Permitted Asset Disposition described in clause (m) or (n) of the definition thereof, to the extent exceeding \$1,000,000 when aggregated with Net Proceeds (Loss) in any Fiscal Year, the difference between (a) the aggregate amount of cash or Cash Equivalents received by a Credit Party or Subsidiary in connection with such Permitted Asset Disposition, and (b) the sum of (i) all reasonable and customary costs and expenses incurred in connection with such Permitted Asset Disposition; (ii) amounts applied to repayment of Debt secured by a Permitted Lien senior to Administrative Agent’s Liens on assets sold; (iii) amounts held in escrow to be applied as part of the purchase price for such assets; (iv) a reasonable reserve for any adjustment in respect of the purchase price of such asset(s) required pursuant to GAAP and/or the after-tax costs of any indemnification payments (fixed or contingent) attributable to indemnities to the purchaser undertaken by such Credit Party or Subsidiary in connection with such Permitted Asset Disposition; and (v) taxes payable or a reasonable reserve for taxes payable in accordance with GAAP in connection therewith; provided that the amounts and reserves described in clauses (iii), (iv) and (v) above, respectively, shall constitute Net Proceeds (Asset Dispositions) at such time as such cash is released and delivered to such Credit Party or Subsidiary or any such reserve is no longer required, as applicable.

“Net Proceeds (Debt)” means, with respect to any incurrence of any Debt of any Credit Party or Subsidiary not permitted to be incurred by this Agreement, the difference between (a) the aggregate amount of cash or Cash Equivalents received in connection with the incurrence of such Debt and (b) the aggregate amount of any reasonable transaction costs actually incurred in connection therewith, including all reasonable and documented fees and expenses of attorneys, accountants, and other consultants, all reasonable underwriting or placement agent or arranger fees, and reasonable fees and expenses of any administrative agent or collateral agent.

“Net Proceeds (Loss)” means, in connection with the receipt by a Credit Party or Subsidiary, or by Administrative Agent as “lender’s loss payee” by endorsement as provided in **Section 8.3**, of any cash proceeds (including proceeds of insurance paid with respect to or awards or compensation) arising from any Loss, to the extent exceeding \$1,000,000 when aggregated with Net Proceeds (Asset Dispositions) in any Fiscal Year, the difference between (a) the aggregate amount of cash or Cash Equivalents received by such Credit Party or Subsidiary or Administrative Agent in connection with such Loss and (b) the sum of (i) all reasonable and customary costs and expenses incurred in connection with collection thereof, (ii) any amounts applied to repayment of Debt secured by a Permitted Lien senior to Administrative Agent’s Liens with respect to the Property suffering such Loss and (iii) taxes payable or a reasonable reserve for taxes payable in accordance with GAAP in connection therewith; provided that the amounts and reserves described in clause (iii) above shall constitute Net Proceeds (Loss) at such time as such cash is released and delivered to such Credit Party or Subsidiary or any such reserve is no longer required, as applicable.

“NOLV” means, as to any Inventory, the expected dollar amount to be realized at an orderly, negotiated sale of such Inventory, net of all operating expenses, commissions and other liquidation expenses, as determined by Administrative Agent from time to time based on the most recent Qualified Appraisal of such Inventory.

“NOLV Percentage” means, at any time of determination and with respect to any Inventory, the amount of the value of such Inventory, expressed as a percentage, expected to be realized at an orderly, negotiated sale of such Inventory, net of all operating expenses, commissions and other liquidation expenses, as determined by Administrative Agent from time to time based on the most recent Qualified Appraisal stating the NOLV of such Inventory (it being recognized and agreed by Borrowers that individual types or kinds of Inventory may have different NOLV Percentages).

“Non-Consenting Lender” means, with respect to any consent, amendment, or waiver under **Section 15.2(a)** (including any forbearance of Administrative Agent’s or any Lender’s rights and remedies), any Lender whose consent to such consent, waiver, or amendment (or forbearance) was required but which, for any reason, failed to provide such consent before the later to occur of (a) the end of the period of time established by Administrative Agent for the obtaining of such consent from the Lenders and (b) five (5) Business Days after the Required Lenders shall have provided such consent; provided, however, that any such Lender shall cease to be a Non-Consenting Lender on the 120th day following the later to occur of (i) expiration of the time allotted for obtaining such consent from the Lenders and (ii) the date on which the Required Lenders consented thereto.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Notes” means each Revolving Note, the Swing Line Note and any other promissory note executed by Borrowers, or any of them, to evidence any Obligations, as amended, restated, amended and restated, supplemented, waived, renewed or otherwise modified from time to time.

“Notice of Borrowing” means a notice substantially in the form of Exhibit C or such other form requested by or acceptable to Administrative Agent in its discretion from time to time.

“Notice of Conversion/Continuation” means a notice substantially in the form of Exhibit D or such other form requested by or acceptable to Administrative Agent in its discretion from time to time.

“Obligations” means all Debts, obligations and other liabilities of every kind and nature of each Obligor (and all Obligors, jointly and severally) at any time or from time to time owed or owing to Administrative Agent (including any former Administrative Agent in its capacity as such), any LC Issuer, any Lender (including any former Lender in its capacity as such), and any Bank Product Provider under this Agreement, any Note or any other Loan Document or Bank Product Agreement (including Swap Obligations, subject to the proviso set forth below), together with all renewals, extensions, modifications or re-financings (other than re-financing by any third party) of any of the foregoing, whether arising from an extension of credit, issuance of a Letter of Credit, acceptance, Loan, Guaranty, indemnification, or otherwise, and whether direct or indirect (including any acquired by assumption), absolute or contingent, due or to become due, primary or secondary, joint or several, and specifically including, but without limitation, (a) all principal of and premium, if any, on the Loans; (b) all LC Obligations and other obligations of the Credit Parties with respect to Letters of Credit; (c) all interest, expenses, fees, Claims, all Protective Advances and other sums payable by the Credit Parties, or any of them, under this Agreement or the other Loan Documents (including any interest on pre-petition Obligations accruing after the commencement of any Insolvency Proceeding by or against any Credit Party, whether or not allowable in such Insolvency Proceeding); (d) all Indemnitee Obligations; (e) all Bank Product Obligations; (f) all obligations of Obligors to make reimbursements hereunder, including in regard to Extraordinary Expenses, (g) all Erroneous Payment Subrogation Rights; and (h) all obligations of the Obligors under or in respect of any Claims; provided, however, that the term “Obligations” shall expressly exclude any Excluded Swap Obligations.

“Obligor” means (a) each Borrower, (b) each Credit Party, and (c) each Guarantor or other Person (including any Subsidiary) that is not a Credit Party that is or becomes liable for payment of any Obligations or that has granted or grants a Lien in favor of Administrative Agent on any of its Properties to secure the payment or performance of any Obligations.

“OFAC” means The Office of Foreign Assets Control of the United States Department of the Treasury or any successor thereto.

“Ordinary Course of Business” means the ordinary course of business of any Credit Party or Subsidiary, undertaken in Good Faith.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its articles of organization, certificate of formation or comparable documents, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

“OSHA” means the Occupational Safety and Health Act of 1970.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient 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 Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“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 Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 14.4**).

“Over Advance” means, at any time of determination, the amount, if any, by which the Aggregate Revolving Obligations at such time exceed the Borrowing Base at such time.

“Over Advance Loan” means a Base Rate Revolving Loan made when an Over Advance exists or is caused by the funding thereof.

“Overnight Bank Funding Rate” means, on any date of determination, the rate per annum (based on a year of 360 days and actual days elapsed) comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York, as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by such Federal Reserve Bank (or by such other recognized electronic source (such as Bloomberg) selected by Administrative Agent for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by Administrative Agent at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as set forth above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to any Borrower.

“Paid in Full,” “Pay in Full,” “Payment in Full” (and words of similar import) means: (i) with respect to the Obligations, or any portion thereof, and except as provided in clauses (ii) and (iii) below, the full payment thereof, including any interest, fees, and other charges and charges thereon (including any thereof accruing during an Insolvency Proceeding, whether or not allowed in such proceeding), in immediately available collected funds; plus (ii) if such Obligations are LC Obligations or otherwise are inchoate or contingent in nature, the Cash Collateralization thereof (or delivery of a standby letter of credit or other credit support acceptable to Administrative Agent in its discretion, in an amount at least equal to the otherwise required Cash Collateral); plus (iii) if such Obligations are Bank Product Obligations (including Swap Obligations), the delivery of cash collateral in such amounts as shall be required by the applicable Secured Party party thereto or other arrangements in form and substance reasonably satisfactory to such Secured Party in respect thereof shall constitute Payment in Full of such Obligations; and (iv) in connection with the payment of all, or substantially all, Obligations (excepting therefrom any Obligations described in and governed by clauses (ii) and (iii) above), the termination of all Commitments relative to such Obligations and the release of all Claims of all Credit Parties against Administrative Agent, LC Issuer and the Lenders arising on or before the full payment date in respect of such Obligations.

“Parent” has the meaning set forth in the preamble hereto.

“parent” in relation to any Credit Party or Subsidiary, is a Person that owns or Controls at least fifty percent (50%) of the issued and outstanding Voting Equity Interests of such Subsidiary, either directly or indirectly.

“Parent Company” means any Person that is a direct or indirect parent (which may be organized as, among other things, a partnership or limited liability company) of Parent so long as such Person is (a) directly or indirectly controlled by one or more of the Permitted Holders (or any group directly or indirectly controlled by one or more of the Permitted Holders) or (b) a public company (i) which owns, directly or indirectly, beneficial ownership of more than 50.0% of the total voting power of the Voting Equity Interests of Parent (provided that, for purposes of this clause (b), no Person (other than a Permitted Holder) or Persons (other than one or more Permitted Holders) that are together a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) owns more than 50.0% of the total voting power of the Voting Equity Interests of such public company, unless the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power, contract or otherwise, to elect or designate for election at least a majority of the Board of Directors (or equivalent Governing Body) of Parent), (ii) beneficial ownership of which is owned, directly or indirectly, more than 50.0% by one or more Permitted Holders or (iii) if no Person (other than a Permitted Holder) or Persons (other than one or more Permitted Holders) that are together a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) owns, directly or indirectly, a greater beneficial ownership in such public company than the Permitted Holders; it being understood that(x) there may be more than one direct or indirect Parent Companies of Parent and (y) any Person that is a direct or indirect Subsidiary of any Person described above whose primary assets are the Equity Interests of Parent or one or more other Parent Companies shall be a Parent Company.

“Participant” shall have the meaning set forth in **Section 13.1(d)**.

“Participant Register” shall have the meaning set forth in **Section 13.1(d)**.

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

“Payment Conditions” means, as of any date of determination with respect to the payment of certain Debt as set forth in **Section 9.6(f)**, the requirement that either (a) (i) no Event of Default shall have occurred and be continuing or would arise as a result thereof, (ii) after giving effect thereto on a Pro Forma Basis, both Excess Availability as of the date of the making of such Restricted Payment and Average Excess Availability for the 30 days period prior to the making of such Restricted Payment is not less than an amount equal to the greater of (x) \$12,500,000 and (y) an amount equal to 15% of the Revolving Commitments, (iii) after giving effect thereto on a Pro Forma Basis, the Fixed Charge Coverage Ratio is greater than or equal to 1.10:1.00 on such date of determination; and (iv) Borrower Representative shall have delivered to Administrative Agent and Term Loan Agent a certificate of a Responsible Officer of Borrower Representative certifying that all the requirements of clause (a) of this definition have been satisfied, which certificate shall include reasonably detailed calculations demonstrating satisfaction of such requirements or (b) (i) no Event of Default shall have occurred and be continuing or would arise as a result thereof, (ii) after giving effect thereto on a Pro Forma Basis, Average Excess Availability for the 30 days period prior to the making of such Restricted Payment is not less than an amount equal to 20% of the Revolving Commitments, and (iii) Borrower Representative shall have delivered to Administrative Agent and Term Loan Agent a certificate of a Responsible Officer of Borrower Representative certifying that all the requirements of clause (b) of this definition have been satisfied, which certificate shall include reasonably detailed calculations demonstrating satisfaction of such requirements.

“Payment Item” means each check, draft, or other item of payment payable to a Credit Party, including those constituting Proceeds of any Collateral.

“Payment Recipient” shall have the meaning set forth in **Section 12.10(d)(i)**.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any employee pension benefit plan (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Credit Party or ERISA Affiliate or to which the Credit Party or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five (5) plan years.

“Permits” shall have the meaning set forth in **Section 7.23(a)**.

“Permitted Acquisition” means an Acquisition, directly or indirectly, by a Credit Party of (i) all or substantially all of the assets, a business unit or a division of a Person, (ii) (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or (iii) a majority (or greater) of the outstanding Equity Interests of a Person, in each instance if and to the extent that such Person is organized under the laws of the United States of America or any State thereof, so long as each of the following conditions is satisfied prior to, or upon, such Acquisition being consummated, as determined by Administrative Agent in its discretion (unless and except to the extent that one or more of such conditions is otherwise waived or modified in one or more instances by Administrative Agent, in its discretion):

(a) such acquired Person or assets, as applicable, are located in the continental United States of America and satisfy the provisions of **Section 9.7(j)**;

(b) with respect to any Person that is or becomes a Subsidiary organized in the United States, such Person shall deliver all of the documents that are required by **Section 8.14** and **Section 8.15** and the certificates representing the Equity Interests of such Person, together with undated powers executed and delivered in blank by a Responsible Officer of the applicable Credit Party or such Subsidiary, as the case may be, and take all actions deemed necessary or advisable by Administrative Agent to cause the Lien created by this Agreement to be duly perfected against the Equity Interests in and Property of such Person, including the filing of Financing Statements in such jurisdictions as may be requested by Administrative Agent and a collateral assignment of rights with respect to the applicable Acquisition documents executed by the applicable Credit Parties and (unless otherwise agreed by Administrative Agent) acknowledged and accepted by the seller and target of such Acquisition;

(c) the applicable Credit Party has made available to Administrative Agent, not later than fifteen (15) Business Days (or such later date to which Administrative Agent may agree) prior to the proposed date of such Acquisition, (i) a general description of the business and Property of the Acquisition target, (ii) lien search results that reflect that, after giving effect to the Acquisition and any contemplated releases, there shall be no Liens other than Permitted Liens with respect to the Acquisition target, (iii) the material Acquisition documents (or drafts thereof), including a copy of the purchase and sale agreement with all schedules and exhibits thereto, (iv) Projections (unless delivery thereof is waived by Administrative Agent in its sole discretion) on a monthly basis for the immediately following twelve-month period after giving effect to such Acquisition demonstrating Credit Parties' compliance with the Financial Covenants, (v) a certificate from a Responsible Officer of Borrower Representative that (x) certifies compliance with the conditions set forth in this definition of Permitted Acquisition, (y) certifies compliance with the Financial Covenants on a Pro Forma Basis after giving effect to such Acquisition and that both Excess Availability as of the date such Acquisition is consummated and Average Excess Availability for the 30 days period prior to the date such Acquisition is consummated is not less than \$12,500,000, and (z) provides for other customary closing certifications, including by attaching certified copies of the applicable Acquisition documents, certifying as to the closing of such Acquisition, and that all representations and warranties contained in such closing certificate are true, correct and complete after giving effect to such Acquisition, (vi) audited financial statements of the acquired Person for the immediately preceding three year period to the extent available or, if not available, such other financial statements as shall be acceptable to Administrative Agent (including unaudited financial statements for the most recent interim period available) and (vii) any and all other information reasonably requested by Administrative Agent;

(d) the applicable Credit Party (and the Persons being acquired, if applicable) shall have executed and delivered such amendments or supplements to this Agreement or the other Security Documents or such other documents as Administrative Agent may deem necessary or advisable to grant Administrative Agent a first priority Lien (subject to Permitted Liens) on all of the acquired assets;

(e) no Default or Event of Default shall exist or result therefrom, and, without limitation of the foregoing, no Debt will be incurred, assumed, or would exist with respect to any Credit Party or any of its Subsidiaries as a result of such Acquisition, other than Debt permitted to exist under **Section 9.1** and no Liens will be incurred, assumed, or would exist with respect to the assets of any Credit Party or its Subsidiaries as a result of such Acquisition other than Permitted Liens;

(f) the assets of the Person being acquired or the Person whose Equity Interests are being acquired did not have negative Consolidated EBITDA (determined, for computational purposes herein, as if such Person and its Subsidiaries, as applicable, were the "Tested Companies") during the twelve (12) consecutive month period most recently concluded prior to the date of the proposed Acquisition (which calculation may be made net of the amount of cost savings and operating expense reductions reasonably projected by to be realized by such Entity as a result of actions taken or to be taken in connection with such Acquisition),

(g) Administrative Agent shall have received evidence satisfactory to it, certified by a certificate of a Responsible Officer of Borrower Representative issued to Administrative Agent contemporaneously therewith and in form and substance acceptable to Administrative Agent, that, both before and after giving effect to such Acquisition on a Pro Forma Basis, (i), each Credit Party is Solvent and (ii) Credit Parties are in compliance with all Financial Covenants;

(h) the board of directors (or other comparable Governing Body) of the Person being acquired or whose assets are being acquired shall have duly approved such Acquisition and such Person shall not have announced that it will oppose such Acquisition and shall not have commenced (or had commenced against it) any Adverse Proceeding that alleges that such Acquisition will violate Applicable Law or any Material Contract;

(i) such Acquisition is consummated in all material respects in accordance with the applicable Acquisition documents (or drafts thereof) delivered to Administrative Agent pursuant to clause (c)(iii) above (that shall be reasonably satisfactory to Administrative Agent), and all consents for such Acquisition shall have been received;

(j) the aggregate amount of cash and non-cash consideration (including all cash and Debt, including contingent obligations, incurred or assumed and the maximum amount of any Earn-Outs or similar payment in connection therewith (whether or not actually earned)) does not exceed (i) \$2,500,000 for all Acquisitions during the immediately preceding twelve (12) month period and (ii) \$5,000,000 in the aggregate during the term of this Agreement; and

(k) aggregate consideration (including by way of any Earn-Outs or similar payment or any assumption (including Debt of the acquire Person) of any Debt) for Acquisitions of Persons that do not become, direct or indirect, wholly owned Subsidiaries of Parent shall not exceed \$2,500,000 in the aggregate during the term of this Agreement.

In connection with any Permitted Acquisition whether by purchase of stock, merger, or purchase of assets and whether in a single transaction or series of related transactions, by a Borrower, Administrative Agent shall have the right to determine in its Permitted Discretion which assets so acquired shall be included in the Borrowing Base (subject to the provisions of the definitions "Borrowing Base," "Eligible Accounts" and "Eligible Inventory" and any other provisions of this Agreement and the other Loan Documents applicable to the computation and reporting of the Borrowing Base). In connection with such determination, Administrative Agent may obtain, at Borrowers' expense, such appraisals, field exams and other assessments of such assets as it may deem desirable and all such appraisals, exams and other assessments shall be paid for by Borrowers; provided, that, unless otherwise determined by Administrative Agent in its Permitted Discretion, in no event shall Inventory, Accounts or Credit Card Receivables be included in the Borrowing Base until Administrative Agent has completed applicable appraisals, exams and other assessments in form and substance satisfactory to Administrative Agent with respect to such assets.

"Permitted Asset Disposition" means, as long as (i) except with respect to clauses (a), (c) and (f) below, no Default or Event of Default exists or would result therefrom and (ii) subject to the Term Loan Intercreditor Agreement, all Net Proceeds (Asset Dispositions) are remitted to Administrative Agent to the extent required hereby, an Asset Disposition that constitutes or is:

(a) a sale of Inventory in the Ordinary Course of Business or pursuant to any barter, trade or similar agreement; *provided* that the aggregate amount of non-cash consideration received by the Loan Parties and the Subsidiaries in connection with any Disposition of Inventory by means of a barter or trade pursuant to this clause (a) shall not exceed \$5,000,000 in the aggregate in any Fiscal Year, beginning with the Fiscal Year ending December 31, 2025;

(b) a disposition of Equipment, if such Equipment is exchanged for fair market value for credit against the purchase price of similar replacement Equipment or other Equipment useful in the business of the Credit Parties or their Subsidiaries that is promptly purchased or the proceeds of such disposition are promptly applied to the purchase price of such replacement Equipment or other Equipment (which replacement Equipment or other Equipment is actually promptly purchased); provided that in connection with any such disposition of Equipment constituting Collateral, any similar replacement Equipment or other Equipment useful in the business of the Credit Parties shall also be Collateral subject to the Lien of Administrative Agent thereon;

(c) a disposition of Inventory that is obsolete, un-merchantable, or otherwise unsalable in the Ordinary Course of Business;

(d) (1) a sale or other disposition (other than abandonment or lapse) of Intellectual Property that is no longer economically practicable to maintain or useful in the conduct of the Credit Parties and Subsidiaries' business, (2) the abandonment or lapse of Intellectual Property that is no longer economically practicable to maintain, material to, or useful in, the conduct of the Credit Parties and Subsidiaries' business, (3) a non-exclusive license or sublicense of Intellectual Property in the Ordinary Course of Business not interfering, individually or in the aggregate, in any material respect with the conduct of the business of the Credit Parties and Subsidiaries, (4) an exclusive license (A) for a limited geography (other than in the United States or any state or territory thereof (except that regional distribution agreements in the United States or any state or territory thereof in respect of ready to drink coffee products shall be permitted to the extent meeting the other criteria set forth in this clause (d)(4) (A))), product category (other than of ground, whole bean, single serve, instant or similar coffee and coffee products (but other than ready to drink coffee products)) or sales channel entered into for fair market value and that does not diminish the value of the Intellectual Property licensed or interfere in any material respect with the conduct of the business of the Credit Parties and Subsidiaries, or (B) to an individual, team, organization, or entity for endorsement, sponsorship or marketing purposes or (5) entry into franchise agreements as a franchisor in the Ordinary Course of Business not interfering, individually or in the aggregate, in any material respect with the conduct of the business of the Credit Parties and Subsidiaries;

(e) a write-off, discount, sale, or other disposition of defaulted or past due Accounts and similar obligations in the Ordinary Course of Business and (for avoidance of any doubt) not part of any financing of Accounts;

(f) a sale, transfer or other disposition, of any Property (i) by a Credit Party to another Credit Party provided that no ABL Priority Collateral shall be sold, transferred or disposed to Parent, unless 100% of Parent's Equity Interests are pledged to Administrative Agent as Collateral; (ii) by any Foreign Subsidiary to any other Foreign Subsidiary; (iii) by any Domestic Subsidiary that is not a Credit Party to any other Domestic Subsidiary that is not a Credit Party; (iv) by any Subsidiary that is not a Credit Party to any Credit Party for consideration not exceeding fair market value; provided that any such disposition of Property constituting Collateral shall be made subject to the Lien of Administrative Agent thereon; or (v) by a Credit Party to any Subsidiary that is not a Credit Party so long as such Permitted Asset Disposition constitutes a permitted Investment hereunder (provided that no ABL Priority Collateral shall be sold, transferred or disposed to any Subsidiary that is not a Credit Party without the Administrative Agent's prior written consent);

(g) a Division, to the extent expressly permitted by **Section 9.7**;

(h) termination of a lease of Property that is not necessary for the Ordinary Course of Business or would not reasonably be expected to have a Material Adverse Effect;

(i) a lease, sublease, license, or sublicense of Real Estate granted by any Credit Party or Subsidiary to other Persons in the Ordinary Course of Business not interfering in any material respect with any Credit Party or Subsidiary's business or Administrative Agent's access to any Collateral;

(j) the voluntary termination of any Swap Agreement to which an Obligor is party;

(k) (i) the issuance of Equity Interests, or (ii) any disposition of Equity Interests of a parent of Parent that are contributed or otherwise delivered to a Credit Party or a Subsidiary made substantially contemporaneously with the contribution or delivery thereof (A) to future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Affiliates or family members or any permitted transferees thereof) of a Credit Party or its Subsidiaries in connection with any plan for the benefit of such Persons or (B) to effect a Restricted Payment permitted by **Section 9.3**, in each case not resulting in a Change of Control;

(l) any other disposition of assets so long as (i) the net cash proceeds thereof, when aggregated with all other dispositions made in accordance with this clause (l) during the same Fiscal Year do not exceed \$1,000,000, (ii) such sale is for not less than fair market value, (iii) at least 75% of the consideration is paid in cash at the time of the disposition, and (iv) at the time of the disposition, no Event of Default has occurred and is continuing or would result therefrom;

(m) (i) the Third Amendment Dispositions so long as (x) no Default or Event of Default shall exist on the date of such Asset Disposition or would result therefrom and (y) on a Pro Forma Basis, Credit Parties shall be in compliance with all Financial Covenants as of the date of such Asset Disposition, and (ii) such other Asset Dispositions approved in writing by Administrative Agent;

(n) dispositions in connection with any sale-leaseback transactions; provided that the mandatory prepayment, if any, in the amount of the Net Proceeds (Asset Dispositions) of such disposition (other than with respect to any Permitted Property Sale) is made as provided in, and to the extent required by, **Section 5.2(c)**; provided, further, that no sale-leaseback transactions shall be permitted under this clause (n) unless (i) the sale-leaseback is on terms not materially less favorable to the applicable Credit Party or Subsidiary than such Credit Party or Subsidiary could obtain in an arm's-length transaction, (ii) at least ten (10) days (or such later date as approved by Administrative Agent) prior to such sale-leaseback transaction, if reasonably requested by Administrative Agent, the applicable Credit Party shall have delivered to Administrative Agent the primary agreement in respect of such sale-leaseback transaction and all other documents, instruments and agreements in respect of such sale-leaseback transaction, including, but not limited to, Third Party Claimant consents and approvals and Third Party Claimant Agreements that Administrative Agent has requested in connection with the transactions contemplated thereby (collectively, the "Sale-Leaseback Documents"), (iii) on the date of such sale-leaseback transaction, the applicable Credit Party shall deliver to Administrative Agent the final and fully-executed Sale-Leaseback Documents, which such Sale-Leaseback Documents shall be in form and substance reasonably acceptable to Administrative Agent and, (iv) no Default or Event of Default shall have occurred and be continuing or would immediately result after giving effect to such sale-leaseback transaction; or

(o) Dispositions of cash and other property in the form of charitable donations.

"Permitted Discretion" means a determination made in Good Faith and in the exercise of reasonable business judgment (from the perspective of a secured, asset-based lender extending credit of similar amounts and types to similar businesses, considered without regard to any course of dealing).

"Permitted Holders" means (a) any current and former employees and members of management of Parent or its Subsidiaries, any Affiliates of such Persons, any trust, entity, family partnership, or other similar estate planning vehicle established by or on behalf of, and for the primary benefit of, any such Persons, and after the death or incapacity of such Persons, the heirs or beneficiaries of such Persons, (b) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing Persons described in clause (a) are members; provided, that in the case of such group and without giving effect to the existence of such group or any other group, such Persons described in clause (a), collectively, have, directly or indirectly, beneficial ownership of more than 50.0% of the Voting Equity Interests of Parent, and (c) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Equity Interests of Parent or any Parent Company.

"Permitted Liens" shall have the meaning set forth in **Section 9.2**.

"Permitted Location" shall have the meaning set forth in the Security Agreement.

"Permitted Property Sale" means each sale (including, subject to the conditions set forth in clause (n) of the definition of Permitted Asset Dispositions, any sale-leaseback thereof) of Real Estate set forth on **Schedule I**.

“Permitted Purchase Money Debt” means Purchase Money Debt (a) that is either unsecured or secured by only a Purchase Money Lien and (b) is incurred while no Default or Event of Default is in existence and no Default or Event of Default would result from such incurrence.

“Permitted Refinancing Debt” means Debt that is incurred to extend, renew, replace, or refinance another Debt (the “Existing Debt”), to the extent that (a) the aggregate principal amount of such Debt does not exceed the principal amount of the Existing Debt (including unfunded commitments thereunder) at the time such Debt is incurred (other than by the amount of premiums paid thereon, accrued and unpaid interest paid on account thereof, and the fees and expenses incurred in connection therewith); (b) such Debt does not mature earlier than the Existing Debt; (c) the weighted average life to maturity of such Debt (measured as of the date of the extension, renewal, replacement or refinancing) is no less than that of the Existing Debt; (d) [reserved]; (e) in relation to the Obligations, such Debt has the same or lower Lien and payment priority as the Existing Debt and if the Existing Debt is subject to an Intercreditor Agreement with Administrative Agent, the holders of such Debt and the applicable Borrowers shall have executed an acceptable Intercreditor Agreement with Administrative Agent; (f) if the Debt that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then, the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable, taken as a whole, to the Lenders and other Secured Parties as those that were applicable to the refinanced, renewed, or extended Debt; (g) [reserved]; (h) no Liens secure such Debt, other than Liens of the same scope, nature, and priority, and covering the same assets, as those which secured the Existing Debt; (i) no Person is obligated with respect to such Debt (as borrower, guarantor, or otherwise) to any greater extent than such Person is obligated with respect to the Existing Debt; (j) the material terms (other than pricing and yield and optional prepayment or redemption provisions) of such Debt or of any agreement entered into or of any instrument issued in connection therewith are not, in the aggregate, less favorable in any material respect to Borrowers or any other Credit Parties or to the Lenders or any other Secured Parties than the terms of any agreement or instrument governing the Debt so extended, refinanced, renewed, replaced, defeased or refunded (except for covenants and other provisions applicable only to periods after the Commitment Termination Date); and (k) at the time such Debt is incurred, and immediately after giving effect thereto, no Default or Event of Default exists or would result therefrom.

“Permitted Restricted Payment Amount” means in any Fiscal Year, an aggregate amount equal to 25% of Excess Cash Flow (as defined in the Term Loan Credit Agreement) for the immediately preceding Fiscal Year.

“Permitted Tax Distributions” means, (a) with respect to Parent, so long as it is taxable as a partnership for United States federal income tax purposes, tax distributions to the owners of Equity Interests in Parent in accordance with Section 4.01(b) of the Third Amended and Restated Limited Liability Company Agreement of Parent as in effect on the Closing Date, and (b) with respect to any other Credit Party so long as it is taxable as a partnership or “disregarded entity” for United States federal income tax purposes, tax distributions to the owners of Equity Interests in such Credit Party that is a Credit Party (its “shareholders”) in an aggregate amount that does not exceed, with respect to any period, an amount equal to (i) the product of (A) the Applicable Tax Percentage, multiplied by (B) such Credit Party’s actual federal taxable income, minus (ii) to the extent not previously taken into account, any income tax benefit attributable to such Credit Party that could be utilized by its shareholders, in the current or any prior year, or portion thereof, from and after the Closing Date (including any tax losses or tax credits), computed at the Applicable Tax Percentage of the year that such benefit is taken into account for purposes of this computation; provided, however, that the computation of distributions under this definition shall also take into account (x) the deductibility of state and local taxes for federal income tax purposes and (y) any difference in the Applicable Tax Percentage resulting from the nature of the taxable income (such as capital gain as opposed to ordinary income, if applicable); provided, further, that, if such Credit Party is a subchapter C corporation, such Credit Party would be entitled to a refund of income taxes previously paid as a result of a tax loss during a year in which such Credit Party is a partnership or “disregarded entity” for U.S. federal or other applicable income tax purposes, then, such shareholder shall repay such Credit Party the amount of such excess or refund, as the case may be, no later than the date the annual tax return must be filed by such Credit Party (without giving effect to any filing extensions) and, in the event such amounts are not repaid in a timely manner by any, then such Credit Party shall not pay or make any distribution with respect to, or purchase, redeem or retire, any Equity Interest of such Credit Party held or Controlled by, directly or indirectly, such shareholder until such payment has been made.

“Permitted Third Party Bank” means (a) any Lender or Affiliate of a Lender or any Person that was a Lender or an Affiliate of a Lender at the time an Article 9 Control Agreement was entered into with such Person and (b) any other bank or other financial institution acceptable to Administrative Agent in its discretion, in the case of each of clauses (a) and (b) above, with whom any Credit Party maintains a Deposit Account subject to the Article 9 Control of Administrative Agent and with whom an Article 9 Control Agreement has been executed within sixty (60) days after the Closing Date (or such later date as may be acceptable to Administrative Agent in its Permitted Discretion), with respect to Deposit Accounts maintained with Permitted Third Party Banks as of the Closing Date.

“Person” means any natural person or Entity.

“Plan” means, as applicable to any one or more Obligors or ERISA Affiliates, a Benefit Plan, a Pension Plan, a Multiemployer Plan or a Foreign Plan.

“Platform” shall have the meaning set forth in **Section 15.1(d)**.

“PNC” shall have the meaning set forth in the preamble to this Agreement and shall extend to all of its successors and assigns.

“PNC Indemnitees” means PNC and its Related Parties.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Administrative Agent) or any similar release by the Federal Reserve Board (as determined by Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Principal Office” means, for Administrative Agent, the Swing Line Lender and LC Issuer, such Person’s “Principal Office” as set forth on Appendix B, or such other office as it may from time to time designate in writing to Borrower Representative and each Lender.

“Pro Forma Basis” means, with respect to any determination related to any Acquisition, Asset Disposition, Investment, Restricted Payment or other specified transaction, that such determination shall be made giving effect to such transaction as if such transaction and any related transactions had been consummated on the first day of the most recently ended twelve (12) Fiscal Months of the Tested Companies for which internal financial statements have been made available to Administrative Agent and Lenders pursuant to **Section 8.6(b)** immediately preceding the date on which such transaction occurs. In connection with the foregoing, (a)(i) with respect to any Asset Disposition, income statement and cash flow statement items (whether positive or negative) attributable to the Property disposed of shall be excluded to the extent relating to any period occurring prior to the date of such transaction and (ii) with respect to any Acquisition, income statement items attributable to the Person or Property acquired shall be included to the extent relating to any period applicable in such calculations to the extent (A) such items are not otherwise included in such income statement items for the Tested Companies in accordance with GAAP or in accordance with any defined terms set forth in **Section 1.1** and (B) such items are supported by financial statements or other information satisfactory to Administrative Agent and (b) any Debt incurred or assumed by any of the Tested Companies (including the Person or Property acquired) in connection with such transaction (i) shall be deemed to have been incurred as of the first day of the applicable period and (ii) if such Debt has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Debt as of the relevant date of determination.

“Pro Rata” means, with respect to any Lender, a percentage (carried out to the ninth decimal place) determined (a) while Revolving Commitments are outstanding, by dividing the amount of such Lender’s Revolving Commitment by the aggregate Revolving Commitments and (b) at any other time, by dividing the aggregate outstanding principal amount of such Lender’s Loans and LC Obligations by the aggregate outstanding principal amount of all Loans and LC Obligations; provided, that, if all of the Revolving Loans have been Paid in Full and all Revolver Commitments have been terminated, but Letters of Credit remain outstanding, “Pro Rata” under this clause shall be determined as if the Revolver Commitments had not been terminated and based upon the Revolver Commitments as they existed immediately prior to their termination; provided, further, that, if all Loans have been Paid in Full and all Commitments have been terminated, and all LC Obligations have been terminated, Paid in Full or Cash Collateralized, the term “Pro Rata” as used under this clause shall be determined as if the Revolver Commitments had not been terminated and based upon the Revolver Commitments as they existed immediately prior to their termination or in such other manner as Administrative Agent shall determine, its discretion, then to be fair and equitable.

“Pro Rata Share” means, with respect to any amount and in reference to any Lender, the portion of such amount allocable to such Lender on a Pro Rata basis. The initial Pro Rata Shares of the Lenders, based on their respective Revolving Commitments, is set forth on Appendix A.

“Projections” means, for any fiscal period, projections of the Tested Companies’ Consolidated balance sheets, results of operations, cash flow, Financial Covenant compliance and Excess Availability for such period, together with a statement of material assumptions, all of which shall be in form and substance satisfactory to Administrative Agent.

“Properly Contested” means, with respect to any Debt, liability or other obligation of any Person, (a) such Debt, liability or other obligation is subject to a bona fide dispute regarding amount or such Person’s liability to pay; (b) such Debt, liability or other obligation is being properly contested in Good Faith by appropriate actions timely taken and diligently pursued; (c) appropriate reserves in regard thereto have been established in accordance with GAAP; (d) non-payment of such Debt, liability or other obligation would not reasonably be expected to have a Material Adverse Effect, nor result in forfeiture or sale of any assets of such Person; (e) no Lien is imposed on assets of such Person, unless bonded and stayed to the satisfaction of Administrative Agent and, in any event, junior to Administrative Agent’s Liens on any or all of such assets; and (f) if such Debt, liability or other obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

“Property,” for any Person, means any right, title or interest of such Person in any type or kind of property or asset, whether Real Estate or personal property, or tangible or intangible property. “Properties” refers, collectively, thereto.

“Property Laws” shall have the meaning set forth in **Section 7.7(h)**.

“Proprietary Rights” shall have the meaning set forth in **Section 7.10(a)**.

“Protective Advance” shall have the meaning set forth in **Section 2.1(e)**.

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

“Public Lender” shall have the meaning set forth in **Section 15.1(d)(iii)**.

“Purchase Money Debt” means Debt (other than the Obligations), including Debt in respect of Capital Leases, incurred to finance or reimburse the purchase price or cost of acquisition, construction or installation of fixed assets, which Debt does not exceed the cost of acquiring, constructing or installing such fixed assets, including any related transaction costs.

“Purchase Money Lien” means a Lien that secures Purchase Money Debt, encumbering only the fixed assets acquired with such Debt and constituting a Capital Lease or a purchase money security interest under the UCC.

“Qualified Appraisal” means, with respect to any Property, an appraisal of such Property conducted in a manner and with such form, scope and substance and using such methods as are acceptable to Administrative Agent by an appraiser selected by, or acceptable to, Administrative Agent, the results of which are acceptable to Administrative Agent in all respects, including in form, scope and substance.

“Qualified Cash” means, as of any date of determination, the aggregate amount of unrestricted cash of Credit Parties maintained in deposit accounts in the name of Borrower with PNC Bank or subject to a control agreement securing the Obligations, in each case other than Excluded Accounts.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Credit Party that, at the time its Guarantee (or grant of Lien, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding Ten Million Dollars (\$10,000,000) or such other Credit Party as constitutes an “eligible contract participant” under the Commodity Exchange Act and that may cause another Person to qualify as an “eligible contract participant” with respect to such Swap Obligation at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Equity Interests” means, Equity Interests other than Disqualified Equity Interests.

“Real Estate” means all right, title, and interest (whether as owner, lessor, or lessee) of a Person in any Property that constitutes real property (including Fixtures), or any interest therein (including a leasehold estate), and all buildings, structures and other improvements thereon or thereto, together with all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, in and to any streets, ways, alleys, strips or gores of land adjoining the same or any part thereof.

“Recipient” means (a) Administrative Agent, (b) any Lender and (c) LC Issuer, as applicable.

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

“Refunded Swing Line Loans” shall have the meaning set forth in **Section 2.3(b)(iii)**.

“Register” shall have the meaning set forth in **Section 13.1(c)**.

“Regions Bank Debt” means all existing Debt of Credit Parties under each of (i) that certain Credit Agreement, dated as of November 8, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among Borrowers, the other credit parties party thereto from time to time, the lenders party thereto from time to time, and Regions Bank, an Alabama bank, in its capacities as administrative agent and collateral agent, (ii) that certain Master Loan Agreement, dated as of July 29, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and between Regions Commercial Equipment Finance, LLC and Regions Equipment Finance Corporation, as the lenders party thereunder, and certain Borrowers party thereto, as borrowers thereunder, and (iii) that certain Loan Agreement, dated as of July 20, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and between Regions Bank, an Alabama bank, as lender, and certain Borrowers party thereto, as borrowers thereunder.

“Reimbursement Date” shall have the meaning set forth in **Section 2.4(b)**.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, attorneys, accountants, consultants, advisors and representatives of such Person and of such Person’s Affiliates.

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

“Removal Effective Date” shall have the meaning set forth in **Section 12.7**.

“Rent and Charges Reserve” means, without duplication, an amount determined from time to time by Administrative Agent in its Permitted Discretion as a Reserve for (a) rent, fees, charges, and other amounts owing by a Borrower to any Third Party Claimant, unless such Person has executed and delivered a Third Party Claimant Agreement, and (b) the amount of all accrued but unpaid or past due rent, fees, charges, or other amounts owing by a Borrower to Third Party Claimants.

“Report” shall have the meaning set forth in **Section 12.2(c)**.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

“Required Lenders” means, subject to **Section 4.2**, at least two (2) Lenders that are not Affiliates (unless there is only one (1) Lender, in which case, such Lender) having (a) Revolving Commitments collectively (or individually) in excess of fifty percent (50.00%) of the aggregate Revolving Commitments or (b) if the Revolving Commitments have terminated, having Aggregate Revolving Obligations collectively (or individually) in excess of fifty percent (50.00%) of all outstanding Aggregate Revolving Obligations; provided, however, that the Commitments and Revolving Credit Exposure held by a Defaulting Lender shall be disregarded for purposes of determining Required Lenders.

“Reserves” means the sum of (without duplication) (a) [reserved]; (b) the Inventory Reserve; (c) the Rent and Charges Reserve; (d) the Bank Product Reserve; (e) reserves for all accrued (after taking into account any subordination agreement in favor of Administrative Agent) Royalties, whether or not then due and payable by a Credit Party; (f) the aggregate amount of liabilities secured by Liens upon any Collateral included in the Borrowing Base that are senior to Administrative Agent’s Liens (but the imposition of any such reserve shall not waive a Default or an Event of Default arising therefrom); (g) [reserved]; (h) the Dilution Reserve; (i) reserves for price adjustments and damages, to the extent such reserve relates to Accounts or Inventory included in Eligible Accounts or Eligible Inventory, as applicable, including returns, discounts, claims (including warranty claims), credits, and allowances of any nature that are not paid pursuant to the reduction of accounts; (j) reserves for special order goods and deferred shipment sales, to the extent such reserve relates to Accounts or Inventory included in Eligible Accounts or Eligible Inventory, as applicable; (k) reserves for accrued but unpaid ad valorem, excise, and Property tax liability and for sale, use, or similar taxes; (l) [reserved]; (m) reserves for any portion of the Obligations that Administrative Agent or any Lender pays in accordance with authority granted in this Agreement or any of the other Loan Documents (except to the extent such payment is made with the proceeds of a deemed Revolving Loan); (n) reserves for all Customer deposits or other prepayments held by a Borrower; (o) reserves to reflect events, conditions, contingencies, or risks that, as determined by Administrative Agent in its Permitted Discretion, adversely affect, or would have a reasonable likelihood of adversely affecting, either (i) the Collateral, its value, or the amount that might be received by Administrative Agent from the sale or other disposition or realization upon such Collateral; (ii) the obligations or liabilities of any Credit Party; or (iii) the Liens and other rights of Administrative Agent or any Secured Party in the Collateral (including the enforceability, perfection, and priority thereof); (p) reserves to reflect Administrative Agent’s belief that any collateral report or financial information furnished by or on behalf of a Credit Party to Administrative Agent is or may have been incomplete, inaccurate, or misleading in any material respect; (q) reserves in respect of any state of facts that Administrative Agent determines in its Permitted Discretion constitutes a Default or an Event of Default; (r) reserves to reflect testing variances identified as part of Administrative Agent’s periodic field examinations or to adjust the value of any Inventory based on the results of, or failure to obtain, a Qualified Appraisal; (s) reserves in respect of self-insured group health plan liabilities of Borrowers and their Subsidiaries; (t) reserves in respect of accrued payables in respect of Inventory Consigned to Borrowers and their Subsidiaries, and (u) such other reserves that Administrative Agent may establish from time to time for such purposes as Administrative Agent shall deem necessary in its Permitted Discretion. Except to the extent otherwise qualified (either in this definition or any related definition used in this definition) or otherwise expressly provided in this Agreement, Administrative Agent may implement Reserves and establish the amounts thereof (from time to time) in its Permitted Discretion. Administrative Agent may establish Reserves as a percentage of any applicable amount or as an amount of money. Notwithstanding the foregoing, or anything to the contrary set forth in this Agreement, Administrative Agent shall have provided Borrower Representative at least three (3) Business Days’ prior written notice of any such establishment or material increase of any Reserves (which notice shall include a reasonably detailed description of such Reserve being established or increased); provided that no such prior notice shall be required for changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized; provided, further, that Administrative Agent may not implement reserves with respect to matters which are already specifically reflected in the eligibility standards for Eligible Accounts and Eligible Inventory.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means, with respect to any Credit Party or Subsidiary, the chairman of the board, president, chief executive officer, chief financial officer, treasurer, chief operating officer, general counsel or other officer, partner, member or representative having the same or similar responsibilities (regardless of title) of such Person.

“Restricted Payment” means each of the following, individually, or, if more than one or all, then, collectively: (a) any payment of (or declaration to pay) a dividend or other distribution (whether in cash, securities, or other Property), whether direct or indirect, on account of any Equity Interests issued by any Credit Party or any of its Subsidiaries, as the case may be, whether now or hereafter outstanding (including any such payment, or declaration of payment, made in connection with any merger or consolidation or otherwise as part of any Acquisition); (b) any return of capital, redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests issued by any Credit Party or any of its Subsidiaries, whether now or hereafter outstanding (including any such payment, or declaration of payment, made in connection with any merger or consolidation or otherwise as part of any Acquisition), except for any redemption, retirement, sinking fund or similar payment made solely in such other shares or units of the same class of Equity Interests or any class of Equity Interests that are junior to that class of Equity Interests; or (c) any cash payment made to redeem, purchase, repurchase, or retire, or obtain the surrender of, any outstanding warrants, options, or other rights to acquire any Equity Interests issued by any Credit Party or any of its Subsidiaries, whether now or hereafter outstanding.

“Restrictive Agreement” means an agreement (other than this Agreement or the other Loan Documents or any Term Loan Debt Document) that conditions or restricts the right of any Credit Party or Subsidiary to (a) incur or repay or Guarantee any Funded Debt; (b) relocate, sell, lease, transfer, dispose of, or grant Liens on, any assets or Property (including by way of a so-called “negative pledge” or similar agreement); (c) declare or make Restricted Payments; (d) modify, extend, or renew this Agreement, any other Loan Document or any other agreement evidencing or securing Funded Debt; or (e) repay any Intercompany Debt or intercompany payables.

“Revolving Commitment” means, at any time of determination and with respect to each Lender, such Lender’s obligation to make Revolving Loans, participate in Swing Line Loans, and participate in LC Obligations. “Revolving Commitments” means, at any time of determination, the aggregate amount of such commitments of all Lenders. The amount of each Lender’s Revolving Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement or any other agreement pursuant to which such Lender becomes a party hereto, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the Closing Date is \$75,000,000.

“Revolving Commitment Increase” shall have the meaning set forth in **Section 2.1(f)**.

“Revolving Credit Exposure,” on any date, means, for each Lender, the aggregate amount (without duplication) of such Lender’s outstanding Revolving Loans and its participation in (a) Swing Line Loans (or in the case of Swing Line Lender, its Swing Line Loans (net of any participations therein by other Lenders) and (b) outstanding LC Obligations on such date.

“Revolving Lender” means a Lender that has issued a Revolving Commitment or, at any time after the Revolving Commitments have been terminated or have expired, that holds any Revolving Loan or LC Obligation.

“Revolving Loan” means a loan made pursuant to **Section 2.1**, and any Swing Line Loan, Over Advance Loan or Protective Advance.

“Revolving Note” means a promissory note executed by Borrowers in favor of a Lender in the form of Exhibit A-1, or such other form as may be requested or approved by Administrative Agent from time to time, which promissory note shall be in the amount of such Lender’s Revolving Commitment and shall evidence the Revolving Loans made by such Lender.

“Royalties” means all royalties, fees, expense reimbursement and other amounts payable by a Credit Party under a License.

“Royalty Payment Account” shall mean one or more Deposit Accounts where only the proceeds of payments of Royalties and Licenses are required to be deposited.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

“Sale-Leaseback Documents” shall have the meaning set forth in the definition of “Permitted Asset Dispositions”.

“Sanctioned Country” means (a) a country, territory or a government of a country or territory, (b) an agency of the government of a country or territory, or (c) an organization directly or indirectly owned or Controlled by a country, territory or its government, that is subject to comprehensive Sanctions.

“Sanctioned Person” means (a) a Person named on the list of “Specially Designated Nationals” or any other Sanctions related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or Controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union, (d) any European Union member state, (e) His Majesty’s Treasury of the United Kingdom or (f) any other relevant sanctions authority.

“Scheduled Noteholder Debt” means the Debt evidenced by the promissory notes set forth on Schedule 1.1.

“Secured Party” means Administrative Agent, each LC Issuer, each Lender, each Bank Product Provider, each Indemnitee and any other Person at any time entitled to receive the benefit of a Lien on any Collateral under the Loan Documents; and “Secured Parties” means all of such Persons.

“Secured Party Designation Notice” means a notice in the form of Exhibit H or such other form as may be requested or approved by Administrative Agent from time to time, to the extent required to be given by **Section 12.13**, from a Bank Product Provider to Administrative Agent to the effect that such Bank Product Provider holds Bank Product Obligations entitled to be secured by the Collateral, (a) describing and setting forth therein its Good Faith determination of the estimated maximum amount thereof to be created or incurred (which such Bank Product Provider may increase or decrease in respect of such Bank Product by subsequent Secured Party Designation Notice), and (b) agreeing to be bound by **Section 12.13**.

“Security Agreement” means the Security and Pledge Agreement, dated as of the Closing Date, made by and among Credit Parties and Administrative Agent.

“Security Documents” means the Security Agreement, together with any Financing Statements, all other security agreements and notices of security interests in Intellectual Property filed or to be filed with any applicable filing office or registry, the Mortgages, Article 9 Control Agreements, any pledge agreement and all other documents, instruments, and agreements now or hereafter executed or delivered by a Credit Party to any Secured Party for purposes of securing (or intending to secure), or perfecting (or intending to perfect) Liens securing, any Obligations.

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

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

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

“SOFR Determination Date” shall have the meaning set forth in the definition of “Daily Simple SOFR”.

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

“SOFR Rate Day” shall have the meaning set forth in the definition of “Daily Simple SOFR”.

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

“Solvent” means, as to any Person, that such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its Debts (including contingent, subordinated, un-matured, and unliquidated liabilities); (b) owns Property whose present fair salable value is greater than the probable total liabilities (including contingent, subordinated, un-matured, and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its Debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. For purposes of this definition, “fair salable value” means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

“Specified Credit Party” means any Credit Party that is, at the time on which the Guarantee (or grant of Lien, as applicable) becomes effective with respect to a Swap Obligation, a corporation, partnership, proprietorship, organization, trust or other Entity that would not be an “eligible contract participant” under the Commodity Exchange Act at such time but for the effect of **Section 5.7(f)**.

“Specified Event of Default” means the occurrence of any Event of Default under the following Sections of this Agreement: (a) **Section 11.1(a)**, (b) **Section 11.1(b)** (solely to the extent resulting from the failure to comply with **Section 8.6(a)**, **8.6(b)**, **8.6(e)** (solely to the extent resulting from the failure to deliver a Compliance Certificate with the deliverables required under **Section 8.6(b)**), **8.12** or **10.1** (after giving effect to **Section 11.7**) hereof), (c) **Section 11.1(d)** (resulting from any misrepresentation contained in any Borrowing Base Certificate delivered pursuant to **Section 8.6(a)** hereof); (d) **Section 11.1(k)** (solely with respect to any Borrower in its capacity as such), or (e) **Section 11.1(l)** (solely with respect to any Borrower in its capacity as such).

“Stated Revolving Commitment Termination Date” means the earlier of (a) December 27, 2029 and (b) ninety-one (91) days prior to the scheduled maturity date of any Debt for borrowed money in excess of the Threshold Amount (other than the Scheduled Noteholder Debt).

“Subordinated Debt” means any Debt (including Intercompany Debt) incurred by a Credit Party or Subsidiary that is expressly subordinate and junior in right of payment to Payment in Full of all Obligations on terms (including maturity, interest, fees, repayment, covenants, and subordination) satisfactory to Administrative Agent and subject to an acceptable Subordination Agreement.

“Subordination Agreement” means, collectively, any agreement (including, as applicable, this Agreement) among Administrative Agent, a Credit Party and the holder of any third party Debt owing to such Person by a Credit Party pursuant to which such Debt is made Subordinated Debt and any Liens on Collateral securing the payment thereof otherwise permitted to exist pursuant to **Section 9.2** are made subordinate to the Lien of Administrative Agent thereon, in each case, on terms and conditions satisfactory to Administrative Agent in its discretion.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business Entity of which more than fifty percent (50%) of the Voting Stock is at the time owned or Controlled, directly or indirectly, by that Person, or the accounts of which would be Consolidated with those of such Person in its Consolidated financial statements in accordance with GAAP, if such statements were prepared as of such date, or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person Controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding. Any unqualified reference to a Subsidiary in this Agreement or in any other Loan Document means a Subsidiary of the applicable Credit Party or a Credit Party if not otherwise stated or implied by context.

“Swap Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement, and (b) any and all transactions or arrangements of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any “International Foreign Exchange Master Agreement”, or any other master agreement (any such agreement or documentation, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any such Master Agreement.

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

“Swap Termination Value” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a) above, the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (that may include a Lender or any Affiliate of a Lender).

“Swing Line Lender” means PNC, together with its successors and assigns.

“Swing Line Loan” means any Borrowing funded with Swing Line Lender’s own funds pursuant to **Section 2.3**.

“Swing Line Note” means a promissory note executed by Borrowers in favor of Swing Line Lender in the form of **Exhibit A-2**, or such other form as may be requested or approved by Administrative Agent from time to time, which note shall be in the maximum amount of Swing Line Loans that Swing Line Lender has agreed to make to Borrowers pursuant to **Section 2.3(a)** and shall evidence Swing Line Loans made by Swing Line Lender.

“Swing Line Rate” means the Alternate Base Rate plus the Applicable Margin applicable to Base Rate Revolving Loans **plus** the Applicable Margin applicable to Term SOFR Rate Revolving Loans (or with respect to any Swing Line Loan advanced pursuant to an Auto Borrow Agreement, such other rate as separately agreed in writing between Borrowers and Swing Line Lender).

“Swing Line Sublimit” means \$0.

“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 income, excise, ad valorem, payroll, and sales taxes, together, in each case, all interest, penalties, fees, charges, and additions applicable thereto.

“Term Loan Agent” means Blue Torch Finance LLC, a Delaware limited liability company, in its capacity as administrative agent on behalf of the Term Loan Lenders under the Term Loan Debt Documents.

“Term Loan Credit Agreement” means that certain Financing Agreement, dated as of the Third Amendment Effective Date, by and among Borrowers, the other Credit Parties party thereto, the Term Loan Lenders and the Term Loan Agent, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time as permitted under this Agreement and the Intercreditor Agreement.

“Term Loan Debt” means the Debt and other obligations owing to Term Loan Agent, Term Loan Lenders and the other Secured Parties under, and as defined in, the Term Loan Debt Documents, from time to time under the Term Loan Debt Documents.

“Term Loan Debt Documents” means the “Loan Documents” as defined in the Term Loan Credit Agreement.

“Term Loan Intercreditor Agreement” shall have the meaning set forth in the definition of “Intercreditor Agreement”.

“Term Loan Lenders” means the Persons party to the Term Loan Credit Agreement as lenders from time to time.

“Term Loan Proceeds Account” shall mean one or more Deposit Accounts or Securities Accounts into which only the Proceeds of any disposition of any Term Priority Collateral (as defined in the Intercreditor Agreement) are required to be deposited.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Administrative Agent in its reasonable discretion).

“Term SOFR Determination Date” shall have the meaning set forth in the definition of “Term SOFR Rate”.

“Term SOFR Rate” means, with respect to any Term SOFR Rate Loan for any Interest Period, the interest rate per annum determined by Administrative Agent by dividing (the resulting quotient rounded upwards, at Administrative Agent’s discretion, to the nearest 1/100th of 1%) (A) the Term SOFR Reference Rate for a tenor comparable to such Interest Period on the day (the “Term SOFR Determination Date”) that is two (2) Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator, by (B) a number equal to 1.00 minus the SOFR Reserve Percentage. If the Term SOFR Reference Rate for the applicable tenor has not been published or replaced with a Benchmark Replacement by 5:00 p.m. (New York City time) on the Term SOFR Determination Date, then the Term SOFR Reference Rate, for purposes of clause (A) in the preceding sentence, shall be the Term SOFR Reference Rate for such tenor on the first Business Day preceding such Term SOFR Determination Date for which such Term SOFR Reference Rate for such tenor was published in accordance herewith, so long as such first preceding Business Day is not more than three (3) Business Days prior to such Term SOFR Determination Date. If the Term SOFR Rate, determined as provided above, would be less than the SOFR Floor, then the Term SOFR Rate shall be deemed to be the SOFR Floor. The Term SOFR Rate shall be adjusted automatically without notice to any Borrower on and as of (i) the first day of each Interest Period, and (ii) the effective date of any change in the SOFR Reserve Percentage.

“Term SOFR Rate Loan” means an Advance that bears interest based on Term SOFR Rate.

“Term SOFR Rate Revolving Loan” means a Revolving Loan bearing interest at a rate based on the Term SOFR Rate.

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

“Tested Companies” means Parent and its Subsidiaries, including all Credit Parties, on a Consolidated basis in accordance with GAAP.

“Testing Period” means a single period consisting of four (4) consecutive Fiscal Quarters of the Credit Parties then last ended (whether or not such Fiscal Quarters are all within the same Fiscal Year).

“Third Amendment” means that certain Third Amendment to Credit Agreement, dated as of the Third Amendment Effective Date, among the Borrowers, Agent and the Lenders.

“Third Amendment Effective Date” means December 27, 2024.

“Third Amendment Dispositions” means those dispositions set forth on Schedule A to the Third Amendment.

“Third Party Claimant” shall have the meaning set forth in the Security Agreement.

“Third Party Claimant Agreement” shall have the meaning set forth in the Security Agreement.

“Threshold Amount” means \$2,500,000.

“Total Net Leverage Ratio” means, at any date of determination, the ratio of (a) the aggregate amount of Funded Debt (including, without limitation, the aggregate amount of Obligations (including all outstanding Letters of Credit) and Term Debt) of the Credit Parties and their Subsidiaries on such date minus Qualified Cash in an amount not to exceed \$7,500,000 to (b) Consolidated EBITDA as of the Testing Period most recently ended.

“Transferee” means any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

“Treasury Services” shall have the meaning set forth in the definition of “Bank Products.”

“Type” means any type of a Loan (i.e., Base Rate Loan or Term SOFR Rate Loan) that has the same interest option and, in the case of Term SOFR Rate Loans, the same Interest Period.

“UCC” means the Uniform Commercial Code as in effect in the Jurisdiction State or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such other jurisdiction.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, that includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

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

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

“Unfunded Capital Expenditures” means, as to Borrowers and their Subsidiaries, without duplication, Consolidated Capital Expenditures funded (a) from such Person’s internally generated cash flow (including cash on the balance sheet) or (b) with the proceeds of a Revolving Loan or Swing Line Loan.

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable Pension Plan year.

“United States” or “U.S.” means the United States of America.

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

“U.S. Tax Compliance Certificate” has the meaning set forth in **Section 14.3(g)(ii)(B)(iii)**.

“Voidable Transfer” shall have the meaning set forth in **Section 15.24**.

“Voting Equity Interest” means, with respect to any Person, those classes of Equity Interests issued by such Person (however designated), the holders of which are at the time entitled, as such holders, to vote for the election of the directors or managers (or persons performing similar functions) of such Person, whether or not the right so to vote exists by reason of the happening of a contingency.

“Withholding Agent” means any Credit Party or Administrative Agent.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Accounting Terms. Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of the Tested Companies delivered to Administrative Agent before the Closing Date and using the same inventory valuation method as used in such financial statements, in each case, except for any change required or permitted by GAAP if the Tested Companies’ certified public accountants concur in such change; provided, however, that, despite the adoption of any such change, Borrower Representative shall (a) in addition to delivery of financial statements pursuant to **Section 8.6(b), (c) or (d)**, and on each date such financial statements are required to be delivered, furnish the adjustments and reconciliations necessary to enable Borrowers and Administrative Agent to determine compliance with each of the Financial Covenants, all of which shall be determined in accordance with GAAP but without giving effect to such change, and (b) the Borrowing Base shall continue to be calculated without giving effect to such change (if the effect of such change would be to increase the amount of Excess Availability); provided, further, that Borrower Representative shall not be required to deliver such adjustments and reconciliations and may apply such change in the calculation of the Borrowing Base and its related terms if (a) the change is disclosed to Administrative Agent and (b) **Section 10**, the definition of “Borrowing Base” and any terms used therein or bearing on the amount of Excess Availability derived therefrom, as applicable, and any other Section of this Agreement or any other Loan Document that is affected thereby is amended in a manner satisfactory to Administrative Agent and Required Lenders to take into account the effects of the change. Notwithstanding the foregoing or any other provision contained herein or in any other Loan Document to the contrary, (i) all financial statements delivered hereunder shall be prepared, and all Financial Covenants shall be calculated, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof, and (ii) any obligations related to a lease (whether now or hereafter existing) that would have been accounted for by such Person as an operating lease in accordance with GAAP as of December 31, 2015 (whether or not such lease existed as of December 31, 2015 or is thereafter entered into) shall be accounted for as an operating lease in accordance with GAAP as of December 31, 2015 and not a Capital Lease or a finance lease for all purposes under this Agreement and the other Loan Documents. The term “unqualified opinion,” as used herein or in any Loan Document, in reference to any opinion given by accountants in a financial statement or report, means an opinion that (i) is unqualified, and (ii) does not include any explanation, supplemental comment or other comment calling into question the ability of the applicable Person to continue as a going concern or concerning the scope of the audit or report (other than any such explanation, supplemental comment or other comment arising solely from (A) the impending maturity of any Debt permitted by this Agreement, (B) any anticipated inability to satisfy the Financial Covenants in **Section 10.1** or any financial covenant set forth in Section 7.03 of the Term Loan Credit Agreement (in each case, only so long as Borrowers would have the ability to exercise a cure right under **Section 11.7** of this Agreement and **Section 9.02** (or any analogous provision) of the Term Loan Credit Agreement) and/or (C) changes in accounting principles or practices reflecting changes in GAAP that are required or approved by Borrowers’ independent certified public accountants).

1.3 **Uniform Commercial Code.** Any term used in this Agreement or in any other Loan Document (including any Financing Statement filed in connection herewith) that is defined in the UCC and not otherwise defined in this Agreement or in any other Loan Document shall have the meaning given such term in the UCC, including, without limitation, the following (portions of which terms may be further defined, or supplemented, elsewhere in this Agreement): “Accessions,” “Account,” “Account Debtor,” “As-extracted Collateral,” “Chattel Paper,” “Commercial Tort Claim,” “Commodity Account,” “Consignee,” “Consignment,” “Consignor,” “Document,” “Electronic Chattel Paper,” “Equipment,” “Farm Products,” “Financing Statement,” “Fixture Filing,” “Fixtures,” “General Intangibles,” “Good Faith,” “Goods,” “Instrument,” “Investment Property,” “Letter-of-Credit Right,” “Payment Intangible,” “Proceeds,” “Securities Account” and “Supporting Obligation;” provided, however, that, to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern; provided, further, that, any such terms used herein or in any other Loan Document that are defined in the UCC as in effect in the Jurisdiction State as of the Closing Date shall continue to have the same meanings notwithstanding any replacement or amendment of such statute that changes any such meanings except as Administrative Agent may otherwise determine.

1.4 Rules of Construction. The terms “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.” The section titles, table of contents, and list of exhibits appear as a matter of convenience only and shall not affect the interpretation of this Agreement or any Loan Document. All Schedules, Exhibits, Annexes, and attachments referred to herein are hereby incorporated herein by this reference. All references in any Loan Document to: (i) any statutes or regulations shall include all related rules and regulations (including implementing regulations in the case of statutes) and any amendments or other modifications of same made from time to time, and any successor statutes, rules and regulations even if words to such effect are included in some instances and not in others; (ii) any agreement, instrument or other documents (including any of the Loan Documents) shall include any and all amendments, restatements, amendments and restatements, supplements, modifications, extensions, waivers, or renewals thereof or thereto, even if words to such effect are included in some instances and not in others (but this clause shall not be construed as any consent to any such amendments, restatements, amendments and restatements, supplements, modifications, extensions, waivers and renewals unless otherwise expressly so provided); (iii) any Person (including an Obligor, Administrative Agent or Lender) shall mean and include the successors and permitted assigns of such Person (but this clause shall not be construed as any consent to any transaction or circumstance giving rise to any successor or assign); (iv) “including” and “include” shall mean “including, without limitation,” regardless of whether “without limitation” is included in some instances and not in others (and, for purposes of each Loan Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit a general statement, that is followed by or referable to an enumeration of specific matters to matters similar to the matters specifically mentioned); (v) subject to the penultimate sentence of this Section, dates and times shall mean the date and time at Administrative Agent’s notice address determined under **Section 15.1**, unless otherwise specifically stated therein (including in the penultimate sentence of this Section). In determining whether any action taken, or to be taken, under this Agreement or any other Loan Document is “commercially reasonable,” Article 9 of the UCC, to the extent applicable thereto, shall govern and control; unless otherwise expressly provided herein or therein. Unless otherwise expressly provided herein or in any other Loan Document with respect to Permitted Discretion, the “discretion” of Administrative Agent or, if applicable, any Lender shall mean the sole and absolute discretion of Administrative Agent or such Lender. All calculations of value of any Property, disbursements of Loans, issuances of Letters of Credit and payments of Obligations shall be in Dollars and all determinations (including calculations of the Borrowing Base and Financial Covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Administrative Agent in its Permitted Discretion (and not necessarily calculated in accordance with GAAP). No provision of any Loan Documents shall be construed or interpreted to the disadvantage of any party hereto by reason of such party’s having, or being deemed to have, drafted, structured, or dictated such provision. Whenever the phrase “to the knowledge of” (or words of similar import) are used in any Loan Document in reference to any Borrower, Borrower Representative or another Credit Party, it means actual knowledge of a Responsible Officer of such Borrower, Borrower Representative or Credit Party, or knowledge that such Responsible Officer would have obtained if he or she had engaged in Good Faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a Good Faith attempt to ascertain the matter to which such phrase relates. Any Loan Document signed by a Responsible Officer acting in such capacity on behalf of a Borrower, Borrower Representative or another Credit Party shall be conclusively presumed to have been authorized by all necessary action on the part of such Borrower, Borrower Representative or other Credit Party, and such Responsible Officer shall be conclusively presumed to have acted on behalf of such party. A Default or an Event of Default shall be deemed “to continue,” “be continuing,” “exist,” or be “in existence” at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing in accordance with this Agreement or, in the case of a Default or an Event of Default under a Financial Covenant, is cured within any period of cure expressly provided in this Agreement. All references herein and in any other Loan Document (i) to the word “will” shall be to have the same meaning as the word “shall” (and vice versa), (ii) to any Person shall include such Person’s successors and permitted assigns, (iii) to the words “asset” and “Property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and Properties, including cash, securities, accounts and contract rights, (iv) to the words “financial statements” shall include all notes and schedules thereto, and (v) to the words “the continental United States of America” shall include each of the States of the United States of America, other than Hawaii and Alaska, unless otherwise approved by Administrative Agent, but expressly shall not include Puerto Rico or any other United States territory. All references herein and in any other Loan Document to date and time of day shall mean and refer to the date and time of day in East Brunswick, New Jersey. If any obligation of payment or performance required under any Loan Document falls on a day which is not a Business Day, then (except as expressly set forth in **Section 3.1(f)**) the due date will be extended to the immediately following Business Day.

1.5 Benchmark Replacement Notification. **Section 14.1** hereof provides a mechanism for determining an alternate rate of interest in the event that the Term SOFR Rate is no longer available or in certain other circumstances. Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the Term SOFR Rate or with respect to any alternative or successor rate thereto, or replacement rate therefor, except to the extent determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of Administrative Agent or any of its officers, directors, employees, Affiliates or agents.

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

SECTION 2

THE CREDIT FACILITIES

2.1 **Revolving Commitment.**

(a) **Revolving Loans.** Subject to the terms and conditions of this Agreement, each Lender agrees, severally (and not jointly) on a Pro Rata basis, up to the amount of its Revolving Commitment, to make Revolving Loans to Borrowers from time to time on any Business Day from and after the Closing Date to but excluding the Commitment Termination Date. Subject to the terms and conditions of this Agreement, Revolving Loans may be obtained, repaid and re-borrowed; provided, however, that no Lender shall have any obligation to honor any request for a Revolving Loan if doing so would cause (i) such Lender's Pro Rata Share of the Aggregate Revolving Obligations to exceed such Lender's Revolving Commitment or (ii) the Aggregate Revolving Obligations to exceed the Loan Limit.

(b) **Revolving Notes.** Borrowers shall execute and deliver to (i) each Lender on the Closing Date, (ii) each Person who is a permitted assignee of such Lender pursuant to **Section 13.1**, upon its becoming such assignee and (iii) each Person who becomes a Lender in accordance with **Section 2.1(f)**, at such time; in each case, to the extent requested by such Person, a Revolving Note to evidence such Person's portion of the Revolving Loans. Termination and Voluntary Reductions of Revolving Commitments. The Revolving Commitments shall terminate on the Commitment Termination Date. Borrowers may terminate or from time to time reduce the Revolving Commitments by giving not less than thirty (30) days' prior written notice to Administrative Agent. Any request from Borrowers for the reduction of the Revolving Commitments must specify the amount of the requested reduction. Each reduction shall be in a minimum amount of \$5,000,000 or any greater integral increment of \$1,000,000. Borrowers may not reduce the Revolving Commitments to an amount less than \$45,000,000, except in connection with the termination of all of the Revolving Commitments. If the Revolving Commitments are ever terminated by Borrowers, Borrowers must Pay in Full upon such termination becoming effective the Revolving Loans and all other Obligations then outstanding. All reductions of the Revolving Commitments shall be applied on a Pro Rata basis. Except to the extent otherwise agreed in writing by Administrative Agent and the Required Lenders, any request from Borrowers for the termination or reduction of the Revolving Commitments shall be irrevocable, once made and received.

(d) **Over Line; Over Advances**

(i) Any amount by which at any time the Aggregate Revolving Obligations exceed the Revolving Commitments shall (A) be immediately due and payable **ON DEMAND** and, once paid to Administrative Agent, shall be applied, first, to the payment of any Swing Line Loans; second, to the payment of all other Revolving Loans that are Base Rate Loans; third, to the payment of all other Revolving Loans that are Term SOFR Rate Loans; and, fourth, to Cash Collateralize any LC Obligations then outstanding; (B) constitute Obligations secured by the Collateral; and (C) be entitled to all benefits of the Loan Documents. In no event shall Administrative Agent be required to honor any request for a Revolving Loan when the Aggregate Revolving Obligations exceed the Revolving Commitments or if, after giving effect to the making of such Revolving Loan, the Aggregate Revolving Obligations would exceed the Revolving Commitments.

(ii) Subject to clause (iii) below, any Over Advance shall (A) be immediately due and payable **ON DEMAND** and, once paid to Administrative Agent, shall be applied, first, to the payment of any Swing Line Loans; second, to the payment of all other Revolving Loans that are Base Rate Loans; third to the payment of any Revolving Loans that are Term SOFR Rate Loans; and, fourth, to Cash Collateralize any LC Obligations then outstanding; (B) constitute Obligations secured by the Collateral; and (C) be entitled to all benefits of the Loan Documents.

(iii) Unless otherwise directed in writing by the Required Lenders, Administrative Agent may require Lenders to honor requests by Borrowers for Over Advance Loans (in which event, and notwithstanding anything to the contrary set forth in this Agreement, Lenders shall continue to make Revolving Loans up to their Pro Rata Share of the Revolving Commitments) and to forbear from requiring Borrowers to cure an Over Advance immediately, if (A) the Over Advance does not continue for a period of more than thirty (30) consecutive days, following which no new Over Advance exists for at least thirty (30) consecutive days before another Over Advance exists, (B) the amount of the Aggregate Revolving Obligations outstanding at any time does not exceed the aggregate of the Revolving Commitments at such time, (C) the Revolving Credit Exposure of any individual Lender at any time does not exceed such individual Lender's Revolving Commitment, and (D) the Over Advance, when aggregated with all other Over Advances then outstanding, does not exceed \$7,500,000.

(iv) Neither the funding of any Over Advance Loan nor the continued existence of an Over Advance shall constitute any waiver by Administrative Agent or any Lender of any Default or Event of Default that may exist at the time any Over Advance Loan is made or that is caused thereby. Each Lender's obligations under this **Section 2.1(d)** are absolute, unconditional, and irrevocable and are not subject to any claim, counterclaim, right of setoff, charge back, discount, defense, qualification, or exception, and each Lender shall perform such obligations, as applicable, regardless of whether the Commitments have terminated, an Over Advance exists or any condition precedent to the making of Loans has not been satisfied.

(v) All Over Advance Loans shall be made as Base Rate Revolving Loans.

(vi) The provisions of this **Section 2.1(d)** are solely for the benefit of Administrative Agent and Lenders, and in no event shall any Borrower or any other Credit Party be deemed to be a third party beneficiary of this **Section 2.1(d)** or be authorized or permitted to, or have any standing to, rely on or enforce any of the provisions of this **Section 2.1(d)**.

(e) Protective Advances. From time to time, Administrative Agent may, in its discretion, make one or more Revolving Loans to preserve, protect, or defend any Collateral or to increase or improve the likelihood of collecting or obtaining repayment of any Obligations, in each case, if Administrative Agent determines in its discretion that doing so is necessary or desirable (a "Protective Advance"). Administrative Agent may make a Protective Advance without regard to Excess Availability or the satisfaction of any condition precedent to the making of Loans, unless (A) the Required Lenders have, by written notice to Administrative Agent, revoked Administrative Agent's authority to do so or (B) Administrative Agent has actual knowledge that, after giving effect thereto, the aggregate outstanding principal amount of all Loans made as Protective Advances (i) would exceed \$7,500,000 or (ii) would cause either the amount of the Aggregate Revolving Obligations outstanding to exceed the aggregate amount of the Revolving Commitments at such time or any individual Lender's Revolving Credit Exposure to exceed such individual Lender's Revolving Commitment at such time. If the terms of the foregoing clauses (A) and (B) above are not applicable, Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. Each Lender shall participate on a Pro Rata basis in each Protective Advance so long as by doing so such Lender's Revolving Credit Exposure would not exceed such Lender's Revolving Commitment at such time. The provisions of this **Section 2.1(e)** are solely for the benefit of Administrative Agent and Lenders, and in no event shall any Borrower or any other Credit Party be deemed to be a third party beneficiary of this **Section 2.1(e)** or be authorized or permitted to, or have any standing to, rely on or enforce any of the provisions of this **Section 2.1(e)**. All Protective Advances shall be made as Base Rate Revolving Loans.

(f) Increases to Revolving Commitments.

(i) Borrower Representative (on behalf of Borrowers) may, at any time prior to the fourth anniversary of the Closing Date, request that the Revolving Commitments be increased (any such increase, a "Revolving Commitment Increase") by one or more of the current Lenders (any current Lender which elects to increase its Revolving Commitment shall be referred to as an "Increasing Lender"); provided that:

(A) Borrower Representative shall have given to Administrative Agent at least thirty (30) days' notice of Borrowers' intention to effect a Revolving Commitment Increase and the desired amount of such Revolving Commitment Increase;

(B) such increase does not increase the amount of the Revolving Commitment of any Lender without the written consent of (y) such Lender, in its sole discretion and (z) Administrative Agent, in its sole discretion;

(C) to the extent requested by any Increasing Lender, Borrowers shall execute a new Revolving Note with respect to such Lender reflecting the amount of, or increase in, such Lender's Revolving Commitment;

(D) as of the date of such Revolving Commitment Increase, both before and immediately after giving effect thereto, (x) no Default or Event of Default shall exist or would result therefrom, (y) on a Pro Forma Basis, Credit Parties shall be in compliance with all Financial Covenants as of the date of such increase, and (z) each of the applicable conditions set forth in **Section 6.2** shall be satisfied;

(E) any such Revolving Commitment Increase shall be in a minimum amount of at least \$5,000,000 (or such lesser amount that shall be approved by Administrative Agent) and in integral multiples of \$1,000,000 in excess thereof;

(F) no more than three (3) Revolving Commitment Increases shall be permitted in total during the term of this Agreement;

(G) after giving effect to such Revolving Commitment Increase, the aggregate amount of the Revolving Commitments shall not exceed \$100,000,000;

(H) each Increasing Lender shall confirm its agreement to increase its Revolving Commitment pursuant to an acknowledgement in a form acceptable to Administrative Agent, signed by it and each Borrower and delivered to Administrative Agent at least five (5) days before the effective date of such increase; and

(I) Borrowers shall deliver to Administrative Agent on or before the effective date of such Revolving Commitment Increase the following documents in form and substance reasonably satisfactory to Administrative Agent: (w) certifications of their corporate secretaries with attached resolutions certifying that the increase in the Revolving Commitment has been approved by such Borrowers, (x) certificate dated as of the effective date of such increase certifying that no Default or Event of Default shall have occurred and be continuing and certifying that the requirements of in this **Section 2.1(f)** have been met and that the representations and warranties made by each Borrower herein and in the other Loan Documents are true and complete in all respects with the same force and effect as if made on and as of such date (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date), (y) such other agreements, instruments and information (including supplements or modifications to this Agreement and/or the other Loan Documents executed by Borrowers as Administrative Agent reasonably deems necessary in order to document the increase to the Revolving Commitments and to protect, preserve and continue the perfection and priority of the liens, security interests, rights and remedies of Administrative Agent and Lenders hereunder and under the other Loan Documents in light of such increase, and (z) an opinion of counsel in form and substance reasonably satisfactory to Administrative Agent which shall cover such matters related to such increase as Administrative Agent may reasonably require and each Borrower hereby authorizes and directs such counsel to deliver such opinions to Administrative Agent and Lenders.

(ii) After any Revolving Commitment Increase, all of the terms and conditions of the Loan Documents shall apply to the increased amount of the Revolving Commitments (including (A) being on a *pari passu* basis in terms of the Collateral, right of payment and Guarantees with the other Revolving Loans, (B) having the same maturity date as the other Revolving Commitments, and (C) having the same Applicable Margin as the other Revolving Loans); provided that Borrowers agree to pay to Administrative Agent and the Lenders increasing their respective Revolving Commitments, commitment and other fees and expenses to be agreed between Borrowers, such Lenders and Administrative Agent in connection with such Revolving Commitment Increase.

(iii) Each Lender hereby acknowledges and agrees that the aggregate Revolving Commitments may be increased pursuant to this **Section 2.1(f)** with respect to each other Lender regardless whether such Lender approves such increase or increases its Revolving Commitment hereunder, and Administrative Agent, Borrowers and any Lender increasing or providing a new Revolving Commitment may enter into an amendment to this Agreement to give effect to such Revolving Commitment Increase and matters incidental thereto without further consent of any other Lender. Administrative Agent shall have no liability to any Borrower or any other Credit Party or to Lenders in connection with any syndication of any Revolving Commitment Increase. Borrowers shall prepay any Revolving Loans on the date of any such increase in the Revolving Commitments to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Revolving Commitments arising from any non-ratable increase in the Revolving Commitments under this **Section 2.1(f)**.

2.2 **[Reserved]**.

2.3 Swing Line Loans; Settlement

(a) Swing Line Loans. During the Revolving Commitment Period, subject to the terms and conditions hereof, the Swing Line Lender may, in its discretion, make Swing Line Loans to Borrowers in an aggregate amount outstanding at any time up to but not exceeding the Swing Line Sublimit; provided, that after giving effect to the making of any Swing Line Loan and any participation that may result therefrom pursuant to the operation and effect of **Section 2.3(b)(iv)**, in no event shall (i) the Aggregate Revolving Obligations exceed the Aggregate Revolving Commitments and (ii) the Revolving Credit Exposure of any Lender exceed such Lender's Revolving Commitment. Amounts borrowed pursuant to this **Section 2.3** may be repaid and re-borrowed during the Revolving Commitment Period. The Swing Line Lender's Revolving Commitment shall expire on the Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans then outstanding and the Revolving Commitments shall have been Paid in Full no later than such date. Each Swing Line Loan shall constitute a Revolving Loan for all purposes, except that payments thereon shall be made solely to Swing Line Lender for its own account. The obligation of Borrowers to repay Swing Line Loans shall be evidenced by the records of Swing Line Lender, provided that, promptly upon Swing Line Lender's request (but, in any event, within five (5) Business Days after receipt of such request), Borrowers shall execute and deliver to Swing Line Lender a Swing Line Note to evidence the Debts arising under the Swing Line Loans.

(b) Borrowing Mechanics for Swing Line Loans

(i) Subject to clause (vi) below, whenever Borrowers desire that the Swing Line Lender make a Swing Line Loan, Borrower Representative shall deliver to Administrative Agent a Notice of Borrowing no later than 11:00 a.m. on the proposed Borrowing date.

(ii) The Swing Line Lender, if it elects to do so, as provided in **Section 2.3(a)**, and subject to the limitations set forth in clause (v) below, shall make the amount of the requested Swing Line Loan (or so much thereof as it elects to make, or is permitted to make, pursuant hereto) available to Administrative Agent not later than 3:00 p.m. on the applicable funding date by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein relative thereto, Administrative Agent shall make the proceeds of such Swing Line Loans available to Borrowers on the applicable funding date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swing Line Loans received by Administrative Agent from the Swing Line Lender to be credited to the account of Borrowers at Administrative Agent's Principal Office, or to such other account as may be designated in writing to Administrative Agent by Borrower Representative.

(iii) With respect to any Swing Line Loans that have not been voluntarily prepaid by Borrowers pursuant to **Section 5.2**, the Swing Line Lender may at any time in its discretion, but in any event not less frequently than weekly, on such weekly settlement date as Swing Line Lender may elect from time to time, deliver to Administrative Agent (with a copy to Borrower Representative), no later than 11:00 a.m. on the day of the proposed funding date, a notice (that shall be deemed to be a Notice of Borrowing given by Borrower Representative) requesting that each Lender holding a Revolving Commitment make a Revolving Loan to Borrowers on such date in an amount equal to its Pro Rata Share of the amount of such Swing Line Loans outstanding on the date that such notice is given that Swing Line Lender requests Lenders to prepay (the “**Refunded Swing Line Loans**”). Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than the Swing Line Lender shall be immediately delivered by Administrative Agent to the Swing Line Lender (and not to Borrowers) and when received shall be applied by the Swing Line Lender to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, the Swing Line Lender’s Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by the Swing Line Lender to Borrowers, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans but shall instead constitute part of Swing Line Lender’s outstanding Revolving Loans to Borrowers. Borrowers hereby authorize Administrative Agent and Swing Line Lender to charge Borrowers’ Deposit Accounts and Securities Accounts with Administrative Agent and Swing Line Lender (up to the amount available in each such Deposit Account and Securities Account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by the Lenders, including the Revolving Loans deemed to be made by the Swing Line Lender, are insufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to the Swing Line Lender should be recovered by or on behalf of Borrowers from the Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be shared among all Lenders based on their respective pro Rata Shares thereof in the manner contemplated by **Section 5.6**.

(iv) If for any reason Revolving Loans are not made pursuant to **Section 2.3(b)(iii)** in an amount sufficient to repay any amounts owed to the Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by the Swing Line Lender, then, each Lender then holding a Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans in an amount equal to its Pro Rata Share of the applicable unpaid amount of the Swing Line Loans then outstanding together with accrued interest thereon; provided that any such participation purchased by such Lender shall be limited to an amount that would not cause the Revolving Credit Exposure of such Lender (after giving effect to such participation) to exceed such Lender’s Revolving Commitment. On the Business Day that notice is provided by the Swing Line Lender (or by the 11:00 a.m. on the following Business Day if such notice is provided after 2:00 p.m.), each Lender holding a Revolving Commitment shall deliver to the Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal Office of the Swing Line Lender. In order to evidence such participation each Lender holding a Revolving Commitment agrees to enter into a participation agreement at the request of the Swing Line Lender in form and substance satisfactory to the Swing Line Lender. In the event any Lender holding a Revolving Commitment fails to make available to the Swing Line Lender the amount of such Lender’s participation as provided in this clause (iv), the Swing Line Lender shall be entitled to recover such amount **ON DEMAND** from such Lender together with interest thereon for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full.

(v) Notwithstanding anything contained herein to the contrary, (1) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to clause (iii) above and each Lender's obligation to purchase a participation in any unpaid Swing Line Loans pursuant to clause (iv) above shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set off, counterclaim, recoupment, defense or other right that such Lender may have against the Swing Line Lender, any Credit Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, Properties, assets, condition (financial or otherwise) or prospects of any Credit Party; (D) any breach of this Agreement or any other Loan Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Lender are subject to the condition that the Swing Line Lender had not received prior notice from Borrower Representative or the Required Lenders that any of the conditions under **Section 6.2** to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans were not satisfied at the time such Refunded Swing Line Loans or other unpaid Swing Line Loans were made; and (2) without limitation of the Swing Line Lender's discretion in regard thereto, as described in **Section 2.3(a)**, the Swing Line Lender shall not be obligated to make any Swing Line Loans (A) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default, (B) it does not in Good Faith believe that all conditions under **Section 6.2** to the making of such Swing Line Loan have been satisfied or waived by the Required Lenders or (C) at a time when a Defaulting Lender exists, unless the Swing Line Lender has entered into arrangements satisfactory to it and Borrower Representative to eliminate the Swing Line Lender's risk with respect to the Defaulting Lender's participation in such Swing Line Loan, including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swing Line Loans in a manner satisfactory to the Swing Line Lender and Administrative Agent.

(vi) In order to facilitate the borrowing of Swing Line Loans, Borrower Representative and the Swing Line Lender may mutually agree to, and are hereby authorized to, enter into an auto borrow agreement in form and substance satisfactory to the Swing Line Lender and Administrative Agent (the "**Auto Borrow Agreement**") providing for the automatic advance by the Swing Line Lender of Swing Line Loans under the conditions set forth in the Auto Borrow Agreement, subject to the conditions set forth herein. At any time an Auto Borrow Agreement is in effect, advances under the Auto Borrow Agreement shall be deemed Swing Line Loans for all purposes hereof, except that Borrowings of Swing Line Loans under the Auto Borrow Agreement shall be made in accordance with the Auto Borrow Agreement. For purposes of determining the Aggregate Revolving Obligations at any time during which an Auto Borrow Agreement is in effect, the outstanding amount of all Swing Line Loans shall be deemed to be the sum of the outstanding amount of Swing Line Loans at such time plus the maximum amount available to be borrowed under such Auto Borrow Agreement at such time.

2.4 Letter of Credit Facility.

(a) Issuance of Letters of Credit. LC Issuer agrees to issue Letters of Credit from time to time for any Borrower's (or any Subsidiary of any Borrower's) account on the terms set forth in this Agreement, including the following:

(i) LC Issuer shall have no obligation to issue any Letter of Credit unless each of the LC Conditions has been satisfied (as determined by LC Issuer and Administrative Agent).

(ii) If LC Issuer receives written notice from Administrative Agent or a Lender at least five (5) Business Days before issuance of a Letter of Credit that any LC Condition has not been satisfied, LC Issuer shall have no obligation to issue the requested Letter of Credit (or any other Letter of Credit) until such notice is withdrawn in writing by Administrative Agent or such Lender or until the Required Lenders have waived the applicable LC Condition in accordance with this Agreement. Before receipt of any such notice, LC Issuer shall not be deemed to have knowledge of any failure to satisfy any LC Condition.

(iii) Borrowers may request and employ Letters of Credit only (A) to support obligations of any Borrower or Subsidiary incurred in the Ordinary Course of Business or (B) for such other purposes, if and to the extent not in contravention of any terms hereof or of any Loan Document, as Administrative Agent and LC Issuer may approve from time to time in writing; provided, however, that LC Issuer shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds from which would be made available to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or Sanctioned Country, or in any manner that would result in a violation of any Sanctions by any party to this Agreement or such Letter of Credit, (ii) if any order, judgment or decree of any Governmental Authority shall by its terms purport to restrain or enjoin the LC Issuer from issuing letters of credit generally or any such Letter of Credit particularly, or any Applicable Law relating to LC Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over LC Issuer shall prohibit, or request that LC Issuer refrain from the issuance of letters of credit generally or any such Letter of Credit particularly or shall impose on LC Issuer with respect to any such Letter of Credit any restriction, reserve or capital requirement (for which LC Issuer is not otherwise compensated hereunder) not in effect on the Closing Date or shall impose on LC Issuer any unreimbursed loss, cost or expense that was not applicable on the Closing Date that LC Issuer deems material to it, including, in each case, but without limitation, from any Change in Law, or (iii) if the issuance of any such Letter of Credit would violate one or more policies of LC Issuer applicable to letters of credit generally or any such Letter of Credit particularly. The renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit, except that the applicable Borrower or Borrowers need not deliver a new LC Application unless requested to do so by LC Issuer. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of a Borrower, a single Borrower, all Borrowers shall be obligated to reimburse LC Issuer hereunder for any and all drawings under such Letter of Credit. Borrowers hereby acknowledge that the issuance of Letters of Credit for the account of any Subsidiaries of Borrowers shall inure to the benefit of Borrowers, and that Borrowers' business will derive substantial benefits from the businesses of such Subsidiaries.

(iv) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, LC Issuer shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation, or communication in whatever form believed by LC Issuer, in Good Faith, to be genuine and correct and to have been signed, sent, or made by a proper Person. LC Issuer may consult with and employ legal counsel, accountants, and other experts including Administrative Agent Professionals (at Borrowers' expense) to advise it concerning its obligations, rights, and remedies with respect to the issuance and administration of Letters of Credit and LC Documents and shall be entitled to act (or refuse to act) upon, and shall be fully protected in any action taken (or refused to be taken) in Good Faith reliance upon, any advice given by such Persons. LC Issuer may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected by it in Good Faith (including, without limitation, with respect to any act or inaction arising from LC Issuer's negligence or strict liability).

(v) Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time (after giving effect to any permanent reduction in the stated amount of such Letter of Credit pursuant to the terms of such Letter of Credit); provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any LC Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

(vi) Unless otherwise expressly set forth in any LC Document or otherwise expressly agreed in writing by the LC Issuer and Borrowers when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each Letter of Credit and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(vii) In the event of any conflict between the terms of this Agreement and the terms of any LC Document, the terms of this Agreement shall control, unless otherwise agreed by Administrative Agent and LC Issuer.

(viii) Without limitation of the foregoing provisions, in the event that any Lender is at such time a Defaulting Lender, the LC Issuer shall have no obligation to issue any Letter of Credit unless LC Issuer has entered into arrangements satisfactory to LC Issuer (in its discretion) with Borrowers or such Defaulting Lender to eliminate such LC Issuer's Fronting Exposure with respect to such Defaulting Lender (after giving effect to any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding amount of the LC Obligations in a manner satisfactory to LC Issuer and Administrative Agent.

(b) Reimbursement; Participations.

(i) On the date that LC Issuer honors any draw under a Letter of Credit (each such date, a **'Reimbursement Date'**), Borrowers shall reimburse LC Issuer on such date the amount paid by LC Issuer on account of such draw, together with interest from the Reimbursement Date until paid by Borrowers (at the interest rate prescribed therefor in clause (v) below). The obligation of Borrowers to reimburse LC Issuer for any draw made under a Letter of Credit is absolute, unconditional, and irrevocable, and Borrowers shall make such reimbursement without regard to any lack of validity or enforceability of such Letter of Credit or the existence of any claim, counterclaim, right of setoff, charge back, discount, defense, qualification, exception or other right Borrowers may have at any time against the beneficiary of such Letter of Credit. On each Reimbursement Date, to facilitate their foregoing reimbursement obligations, Borrowers shall be deemed to have requested a Borrowing of Base Rate Revolving Loans in an amount necessary to pay the amounts due to LC Issuer on such date (regardless of whether Borrower Representative submits a Notice of Borrowing therefor), and each Lender shall fund its Pro Rata Share of such Borrowing, without claim, counterclaim, right of setoff, charge back, discount, defense, qualification, or exception, and regardless of whether the Commitments have terminated, an Over Advance exists or any condition precedent to the making of Loans has not been satisfied.

(ii) Upon the issuance of a Letter of Credit, each Lender shall be deemed to have irrevocably and unconditionally purchased from LC Issuer, without recourse or warranty, an undivided interest and participation in all LC Obligations relating to such Letter of Credit in an amount equal to such Lender's Pro Rata Share thereof. If LC Issuer honors any draw under a Letter of Credit and Borrowers do not reimburse the amount thereof on the Reimbursement Date, Administrative Agent (at LC Issuer's request) shall promptly notify Lenders, and each Lender shall promptly (within one Business Day) unconditionally pay to Administrative Agent, for the benefit of LC Issuer, such Lender's Pro Rata Share of such draw at the Principal Office of Administrative Agent. Upon the failure of any Lender to make such payment when due pursuant hereto, LC Issuer shall be entitled to recover such amount **ON DEMAND** from such Lender together with interest thereon, computed on the basis of a year of three hundred sixty (360), for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full. Upon request by a Lender that has made or is making any such payment, LC Issuer shall furnish such Lender with copies of any Letters of Credit and LC Documents in its possession at such time.

(iii) The obligations of each Lender to make payments to Administrative Agent for the account of LC Issuer in connection with LC Issuer's honoring any draw under a Letter of Credit are absolute, unconditional, and irrevocable and are not subject to any claim, counterclaim, right of setoff, defense, discount, charge back, qualification, or exception, and such Lender shall perform such obligations, as applicable, (A) irrespective of any lack of validity or unenforceability of any Loan Documents; (B) regardless of whether the Commitments have been terminated, an Over Advance exists, any condition precedent to the making of any Loan has not been satisfied; (C) regardless of whether any draft, certificate, or other document presented under a Letter of Credit is determined to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; and (D) regardless of the existence of any setoff or defense that any Credit Party may have with respect to any Obligations. LC Issuer assumes no responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. LC Issuer makes no representation, warranty, or Guarantee, express or implied, with respect to the Collateral, LC Documents, or any Credit Party. LC Issuer is not responsible for (A) any recitals, statements, information, representations, or warranties contained in, or for the execution, validity, genuineness, effectiveness, or enforceability of, any LC Documents; (B) the validity, genuineness, enforceability, collectibility, value, or sufficiency of any Collateral or the perfection of any Lien therein; or (C) the assets, liabilities, financial position, results of operations, business, creditworthiness, or legal status of any Credit Party.

(iv) No LC Issuer Indemnitee shall be liable to Administrative Agent, any Lender, or any other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence, bad faith or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment binding on such LC Issuer Indemnitee. LC Issuer shall have no liability to any Lender if LC Issuer refrains from taking any action, or refuses to take any action, under any Letter of Credit or LC Documents until it receives written instructions from the Required Lenders.

(v) Borrowers agree to pay to the LC Issuer, with respect to drawings honored under any Letter of Credit issued by such LC Issuer, interest on the amount paid by the LC Issuer in respect of each such honored drawing from the date such drawing is honored to, but excluding, the date such amount is reimbursed by or on behalf of Borrowers in accordance herewith at a rate that is the lesser of (i) the rate of interest payable hereunder with respect to Revolving Loans that are Term SOFR Rate Loans and (ii) the Highest Lawful Rate.

(vi) Interest payable pursuant to clause (v) above shall be computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, and shall be payable **ON DEMAND** or, if no demand is made, on the date on which the related drawing under a Letter of Credit is made by the LC Issuer. Promptly upon receipt by the LC Issuer of any payment of interest pursuant hereto, the LC Issuer shall distribute to each Lender, from the interest received by the LC Issuer in respect of the period from the date such drawing is honored to but excluding the date on which the LC Issuer is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the Letter of Credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event the LC Issuer shall have been reimbursed by the Lenders for all or any portion of such honored drawing, the LC Issuer shall distribute to each Lender that has paid all amounts payable by it with respect to such honored drawing such Lender's Pro Rata Share of any interest received by the LC Issuer in respect of that portion of such honored drawing so reimbursed by the Lenders for the period from the date on which LC Issuer was so reimbursed by the Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by Borrowers.

(c) Cash Collateral. If any LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (i) that an Event of Default exists; (ii) after the Commitment Termination Date; or (iii) within twenty (20) Business Days before the Stated Revolving Commitment Termination Date (unless Administrative Agent, in its discretion, agrees to any shorter period), then, Borrowers shall, at LC Issuer's or Administrative Agent's request, Cash Collateralize the stated amount of all outstanding Letters of Credit and pay to LC Issuer the amount of all other LC Obligations that are then outstanding. If Borrowers fail to provide Cash Collateral as required herein, Lenders may (and, upon written request of Administrative Agent, shall) advance, as Revolving Loans, the amount of the Cash Collateral required (regardless of whether the Commitments have terminated, an Over Advance exists, or any condition precedent to the making of any Loan has not been satisfied). Without limitation of the foregoing, at any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of Administrative Agent or LC Issuer (with a copy to Administrative Agent) Borrowers shall Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure after first giving effect to any Cash Collateral provided by the Defaulting Lender.

SECTION 3

INTEREST, FEES, AND CHARGES

3.1 Interest.

(a) Interest Rates. The Obligations shall bear interest (i) with respect to Revolving Loans that are Base Rate Loans, at the Alternate Base Rate plus the Applicable Margin; (ii) with respect to Revolving Loans that are Term SOFR Rate Loans, at the Term SOFR Rate for the applicable Interest Period plus the Applicable Margin; (iii) with respect to Swing Line Loans, at the Swing Line Rate (unless and until converted to a Revolving Loan pursuant to the terms of **Section 2.3**); and (iv) with respect to any other Obligations that are then due and not paid when due (including, to the extent permitted by law, interest not paid when due), at the Alternate Base Rate plus the Applicable Margin for Base Rate Revolving Loans, unless and except to the extent that another interest rate is prescribed therefor in the Loan Documents evidencing such Obligations; provided, however, that the Obligations shall bear interest at the Default Rate (whether before or after any judgment) (A) automatically at all times during the existence of any Event of Default pursuant to **Section 11.1(a)**, **Section 11.1(k)** or **Section 11.1(l)** hereof and (B) if so elected by Administrative Agent or the Required Lenders by written notice to Borrower Representative, from and after the occurrence of, and during the continuation of, any other Event of Default. In such latter regard, each Borrower acknowledges that the cost and expense to Administrative Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate Administrative Agent and Lenders because of such Event of Default and does not constitute a penalty.

(b) Accrual of Interest. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Term SOFR Rate Loan, the date of conversion of such Term SOFR Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Term SOFR Rate Loan, the date of conversion of such Base Rate Loan to such Term SOFR Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Loan.

(c) Payment Dates. Interest accrued on the Loans shall be due and payable (i) in arrears, on each Interest Payment Date (but, with respect to Term SOFR Rate Loans having an Interest Period of six months, at the end of each three month period during such Interest Period), (ii) on any date of prepayment, with respect to the principal amount of Loans being prepaid, and (iii) at maturity. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable **ON DEMAND**. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents or, if no payment due date is provided therein, then, **ON DEMAND**.

(d) Interest Rate Determination and Disclosure. As soon as practicable after 10:00 a.m. on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to each of the Term SOFR Rate Loans for which an interest rate is then being determined (and for the applicable Interest Period in the case of Term SOFR Rate Loans) and shall promptly give notice thereof in writing to Borrower Representative and each Lender, in each case, to the extent that each requests same.

(e) Certain Provisions Regarding Term SOFR Rate Loans

(i) Borrowers may, on any Business Day, subject to delivery of a Notice of Conversion/Continuation (which notice may be transmitted by electronic mail subject to the limitations set forth in **Section 15.1(b)** and the terms of **Sections 3.1(g)** and **3.1(h)**), elect to (A) convert all or any portion of any Base Rate Loans to Term SOFR Rate Loans; (B) convert all or any portion of any Term SOFR Rate Loans to Base Rate Loans; or (C) at the end of its Interest Period continue any Term SOFR Rate Loan as a Term SOFR Rate Loan or convert any Term SOFR Rate Loan to a Base Rate Loan; provided, however, that Administrative Agent may impose further limits on the amounts of any partial conversions or continuations from time to time, and, provided, further, that, during any Default or Event of Default, Administrative Agent may (and, at the direction of the Required Lenders, shall) declare that no Loan may be made as, converted into, or continued as, a Term SOFR Rate Loan, and that all Loans shall be made, converted or continued, instead, as a Base Rate Loan.

(ii) Whenever Borrowers desire to convert any Loan to a Term SOFR Rate Loan or continue any Loan as a Term SOFR Rate Loan, Borrower Representative shall give Administrative Agent a Notice of Conversion/Continuation (which notice may be transmitted by electronic mail subject to the limitations set forth in **Section 15.1(b)**) no later than 11:00 a.m. at least three (3) U.S. Government Securities Business Days before the requested date of such conversion or continuation (unless otherwise agreed by Administrative Agent). Promptly after receiving any such notice, Administrative Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the date of such conversion or continuation (which date shall be a Business Day), and the duration of the Interest Period (which, if not specified, shall be deemed to be one (1) month). If, upon the expiration of any Interest Period of any Term SOFR Rate Loan, Borrowers shall have failed to deliver a Notice of Conversion/Continuation or a request with respect to such Term SOFR Rate Loan, Borrowers shall be deemed to have elected to convert such Term SOFR Rate Loan into a Base Rate Loan.

(f) Interest Periods. In connection with the making, conversion, or continuation of any Term SOFR Rate Loan, Borrowers shall select an interest period (an "Interest Period") therefor, which Interest Period shall be one (1), three (3) or six (6) months; provided, however, that:

(i) each Interest Period shall commence on the date the Loan is made or continued as, or converted into, a Term SOFR Rate Loan, and shall expire on the numerically corresponding day in the final calendar month;

(ii) if any Interest Period commences on a day for which there is no corresponding day in the final calendar month or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month and, if any Interest Period would expire on a day that is not a Business Day, the Interest Period shall expire on the next Business Day; and

(iii) no Interest Period shall extend beyond the Stated Revolving Commitment Termination Date.

(g) Number and Amount of Term SOFR Rate Loans; Determination of Rate. Other than on the Closing Date and on the Third Amendment Effective Date, each Borrowing of Term SOFR Rate Loans when made shall be in a minimum amount of \$1,000,000 or any greater integral multiple of \$500,000 in excess thereof. No more than five (5) Borrowings of Term SOFR Rate Loans may be outstanding at any time, and all Term SOFR Rate Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose.

(h) Closing Date Loans. All Loans (other than Swing Line Loans) made on the Closing Date or within two (2) Business Days thereafter shall be made as Base Rate Loans, unless otherwise approved by Administrative Agent.

(i) Use of Term SOFR Rate. Notwithstanding any other term hereof to the contrary, so long as Administrative Agent is also the only Lender, all Loans (other than Loans made pursuant to **Section 2.1(d)** and **Section 2.1(e)**) made shall, as applicable, be made or continued as, or converted into, Term SOFR Rate Loans.

3.2 Fees.

(a) Upfront Fees. On the Closing Date, Borrowers shall pay to Administrative Agent, for the account of the Lenders, the Upfront Fees as set forth in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(b) Commitment Fee. On the last day of each calendar quarter following the Closing Date and continuing on a quarterly basis thereafter until and including the Commitment Termination Date, Borrowers shall pay to Administrative Agent and for the account of the Lenders, a commitment fee in an amount equal to (i) three-eighths of one percent (0.375%) per annum times (ii) the daily amount by which the Revolving Commitments exceeded the Aggregate Revolving Obligations (other than Swing Line Loans) on each such day during the immediately preceding calendar quarter; provided that (1) no commitment fee shall accrue on the Revolving Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (2) any commitment fee accrued with respect to the Revolving Commitment of a Defaulting Lender during the period prior to the time that such Lender became a Defaulting Lender and unpaid at such time shall not be payable by Borrowers so long as such Lender shall be a Defaulting Lender. For purposes hereof, Swing Line Loans shall not be counted toward or considered as usage of the Aggregate Revolving Commitments.

(c) Letter of Credit Fees. On the last day of each calendar quarter following the date that any Letter of Credit is issued (or renewed or extended), and continuing on a quarterly basis thereafter until its expiration date and thereafter **ON DEMAND**, so long as any Letter of Credit shall remain issued and outstanding or any LC Obligations exist thereunder, Borrowers shall pay, (i) to Administrative Agent, in arrears and for the account of the Lenders, in accordance with their respective Pro Rata Shares thereof, a Letter of Credit fee (the "Letter of Credit Fee"), in an amount equal to (A) a rate per annum equal to the Applicable Margin in effect for Revolving Loans made as Term SOFR Rate Loans plus, at all times when the Default Rate with respect to such Loans is in effect, two percent (2%) per annum, times (B) the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases or decreases periodically pursuant to the terms of such Letter of Credit), provided (1) that no Letter of Credit Fee shall accrue in favor of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (2) except as otherwise provided in **Section 4.2(a)(iii)**, any Letter of Credit Fee accrued in favor of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by Borrowers so long as such Lender shall be a Defaulting Lender, and (ii) directly to each LC Issuer for its own account a fronting fee at the rate per annum specified in the Fee Letter or, as applicable, in any LC Document (but if no such rate is so specified, then, at the rate of twenty-five hundredths of one percent (0.25%) per annum) on the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases or decreases periodically pursuant to the terms of such Letter of Credit), provided that LC Issuer may elect instead that such fronting fee be payable to it upon issuance of any such Letter of Credit. In addition, Borrowers shall pay directly to the LC Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the LC Issuer relating to letters of credit as from time to time in effect. Except as otherwise may be provided in any LC Document such customary fees and standard costs and charges shall be due and payable **ON DEMAND**. All of the foregoing fees and charges shall be fully earned upon issuance of the Letter of Credit, or any amendment, restatement, amendment and restatement, supplement, waiver, consent or other modification from time to time thereto as applicable, and none of such fees or charges shall be refundable, in whole or in part, regardless of any cancellation, termination, or drawing upon the Letter of Credit.

(d) Administrative Agent Fees. Borrowers shall pay to Administrative Agent, for its own account, the fees payable to Administrative Agent that are described in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(e) Other Fees. Borrowers shall pay to each applicable Person the fees payable to such Person that are described in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(f) Calculation and Distribution of Interest Fees, Charges, and Other Amounts. Unless otherwise specifically provided herein or in any other Loan Document, interest, fees, charges and other amounts that are calculated on a per annum basis shall be calculated as follows: (i) for interest determined by reference to the Alternate Base Rate, a year of three hundred sixty (360) days, and (ii) for all other such computations of interest, fees, charges and other amounts, likewise, a year of three hundred sixty (360) days, in each case, for the actual number of days elapsed in the period during which it accrues. Each determination by Administrative Agent of any interest, fees, charges or interest rate hereunder or under any other Loan Document shall be final, conclusive, and binding for all purposes, absent manifest error. All fees payable under this **Section 3.2** are compensation for services and, to the extent of Applicable Law, are not, and shall not be deemed to be, interest or any other charge for the use, forbearance, or detention of money. A certificate as to amounts payable by Borrowers under **Section 14** and **Section 15.4**, timely submitted to Borrower Representative by Administrative Agent or the affected Lender, as applicable, shall be final, conclusive, and binding for all purposes, absent manifest error, and Borrowers shall pay such amounts to the applicable Person within ten (10) days following receipt of such certificate. All fees shall be fully earned when due and shall not be subject to rebate, refund, or proration, in whole or in part. All fees paid to Administrative Agent for the account of the Lenders, LC Issuer, or any other Person shall be paid by Administrative Agent to such Persons promptly upon its receipt thereof and, with respect to fees payable for the account of the Lenders, in accordance with each such Lender's Pro Rata Share thereof.

(g) Maximum Interest. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under Applicable Law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the aggregate outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are Paid in Full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrowers shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest that would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and each of the Credit Parties to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration that constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the aggregate outstanding amount of the Loans made hereunder or be refunded to each of the applicable Credit Parties. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person 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. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, all agreements which either now are or which shall become agreements among Borrowers, Guarantors, Administrative Agent and Lenders are hereby limited so that in no contingency or event whatsoever shall the total liability for payments in the nature of interest, additional interest and other charges exceed the applicable limits imposed by any applicable usury laws. If any payments in the nature of interest, additional interest and other charges made under this Agreement or any other Loan Document are held to be in excess of the limits imposed by any applicable usury laws, it is agreed that any such amount held to be in excess shall be considered payment of principal hereunder, and the Debt evidenced hereby shall be reduced by such amount so that the total liability for payments in the nature of interest, additional interest and other charges shall not exceed the applicable limits imposed by any applicable usury laws, in compliance with the desires of Borrowers, Guarantors, Administrative Agent and Lenders. If the applicable state or federal law is amended in the future to allow a greater rate of interest to be charged under this Agreement than is presently allowed by applicable state or federal law, then the limitation of interest hereunder shall be increased to the maximum rate of interest allowed by applicable state or federal law as amended, which increase shall be effective hereunder on the effective date of such amendment, and all interest charges owing to Lenders by reason thereof shall be payable in accordance with this Agreement.

SECTION 4

LOAN ADMINISTRATION

4.1 Manner of Borrowing and Funding Revolving Loans.

(a) Notice of Borrowing. Revolving Loans shall be made on the Closing Date in accordance with the disbursement agreement delivered by Borrower Representative to Administrative Agent on the Closing Date. Revolving Loans shall be made on the Third Amendment Effective Date in accordance with the Third Amendment. After the Closing Date, Borrowers may request new Revolving Loans (including Swing Line Loans), by delivering to Administrative Agent at its Lending Office a Notice of Borrowing (which notice may be transmitted by electronic mail subject to the limitations set forth in **Section 15.1(d)**). If the requested Revolving Loan is to be a Base Rate Loan, then, unless otherwise agreed in writing by Administrative Agent in its discretion, such Notice of Borrowing must be received by Administrative Agent at or before 11:00 a.m. on the Business Day on which Borrowers desire such Revolving Loan to be made. If the requested Revolving Loan is to be a Term SOFR Rate Loan, then, unless otherwise agreed in writing by Administrative Agent in its discretion, such Notice of Borrowing must be received by Administrative Agent at or before 11:00 a.m. on the third U.S. Government Securities Business Day preceding the date on which Borrowers desire such Revolving Loan to be made. Unless otherwise agreed in writing by Administrative Agent in its discretion, any Notice of Borrowing received by Administrative Agent after 11:00 a.m. on a Business Day (or, as applicable, U.S. Government Securities Business Day) shall be deemed to have been received on the immediately following Business Day. Each Notice of Borrowing for a Revolving Loan shall specify (i) the amount of the Borrowing; (ii) the requested funding date (which must be a Business Day or, as applicable, a U.S. Government Securities Business Day); (iii) whether the Borrowing is requested to be made as a Swing Line Loan; (iv) whether the Borrowing is requested to be made as a Base Rate Loan or Term SOFR Rate Loan; and (v) in the case of a Term SOFR Rate Loan, the duration of the applicable Interest Period. If Borrowers do not specify an Interest Period with respect to any Notice of Borrowing for a Term SOFR Rate Loan, then, the Interest Period for such Loan shall be deemed to be one (1) month.

(b) Deemed Requests for Funding. Each Notice of Borrowing for a Revolving Loan received by Administrative Agent shall be irrevocable.

(i) The becoming due of any Obligations shall be deemed to be a request for a Base Rate Revolving Loan on the due date therefor in the amount of such Obligations, and, upon the making of such Revolving Loan, Administrative Agent shall apply the proceeds thereof in direct payment of such Obligations. In addition, Administrative Agent may, at its option, debit any of Borrowers' or any other Credit Parties' Deposit Accounts maintained at Administrative Agent (or any of its Affiliates) by the amount of any Obligations that are then due and apply the proceeds thereof to the payment of such Obligations. Notwithstanding anything to the contrary in this **Section 4.1(b)(i)**, in no event shall Borrowers be deemed to have requested a Base Rate Revolving Loan or shall Administrative Agent debit any Borrower's Deposit Accounts in respect of any Obligations that are not regularly scheduled payments of interest or fees set forth in **Section 3.1(c)**, **Section 3.2(b)**, **Section 3.2(c)**, **Section 3.2(d)** or **Section 3.2(e)** unless Administrative Agent has given at least five (5) Business Days' prior written notice to Borrower Representative of such payment coming due.

(ii) If Borrowers have established a controlled disbursement Deposit Account with Administrative Agent (or any of its Affiliates), whether pursuant to an Auto Borrow Agreement or otherwise, then, the presentation for payment of any check or other item of payment drawn on such Deposit Account at a time when there are insufficient funds on deposit therein to pay the same shall be deemed to be a request for a Base Rate Revolving Loan on the date of such presentation in the amount of the checks and such other Payment Items presented for payment. The proceeds of such Revolving Loans may be disbursed directly to the controlled disbursement Deposit Account or other appropriate Deposit Account.

(c) Fundings by Lenders. Except for Borrowings that Swing Line Lender elects to make as Swing Line Loans, Administrative Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 12:00 noon on the requested funding date for Base Rate Loans, or by 3:00 p.m. at least three (3) U.S. Government Securities Business Days before any requested funding of Term SOFR Rate Loans. Each Lender shall fund to Administrative Agent such Lender's Pro Rata Share of each requested Borrowing at the Principal Office of Administrative Agent to the account specified by Administrative Agent in immediately available funds no later than 2:00 p.m. on the requested funding date, unless Administrative Agent's notice is received after the times provided above, in which case each Lender shall fund its Pro Rata Share by 11:00 a.m. on the next Business Day or, as applicable, U.S. Government Securities Business Day. Subject to its receipt of such amounts from Lenders, Administrative Agent shall disburse the proceeds of the Revolving Loans in the lawful manner directed by Borrower Representative. Unless Administrative Agent shall have received (in sufficient time to act) written notice from a Lender that it does not intend to fund its Pro Rata Share of a Borrowing, Administrative Agent may assume that such Lender has deposited or will deposit in accordance herewith its Pro Rata Share with Administrative Agent, and Administrative Agent may disburse a corresponding amount to Borrowers. If all or a portion of a Lender's Pro Rata Share of any Borrowing is not in fact received by Administrative Agent, then Borrowers agree to repay to Administrative Agent **ON DEMAND** the amount of any deficiency, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

(d) Borrowers' Account. Administrative Agent shall maintain Borrowers' Account in accordance with its customary procedures; provided, however, the failure by Administrative Agent to record the date and amount of any Loan shall not adversely affect Administrative Agent or any Lender. Each month, Administrative Agent shall send to Borrower Representative a statement showing the accounting for the Loans made, payments made or credited in respect thereof, and other transactions between Administrative Agent, Lenders and Borrowers during such month. The monthly statements shall be deemed correct and binding upon Borrowers in the absence of manifest error and shall constitute an account stated between Lenders and Borrowers unless Administrative Agent receives a written statement of Borrowers' specific exceptions thereto within thirty (30) days after such statement is received by Borrower Representative. The records of Administrative Agent with respect to Borrower Representative shall be conclusive evidence absent manifest error of the amounts of Loans and other charges thereto and of payments applicable thereto.

4.2 **Defaulting Lender.**

(a) Limitation on Actions. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, restatement, amendment and restatement, supplement, waiver, consent or other modification with respect to this Agreement or any other Loan Document shall be restricted as set forth in **Section 15.2(a).**

(i i) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts (other than fees that any Defaulting Lender is not entitled to receive pursuant to **Section 4.2(a)(iii)**) received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, as a scheduled payment or by prepayment, at maturity, pursuant to **Section 11.2** or otherwise, and including any amounts made available to Administrative Agent by that Defaulting Lender pursuant to **Section 15.6**), shall be applied at such time or times as may be determined by Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to LC Issuer or the Swing Line Lender hereunder; third, to Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with **Section 4.6**; fourth, as Borrower Representative may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; fifth, if so determined by Administrative Agent and Borrower Representative to be held in a non-interest bearing Deposit Account and released in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize LC Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with **Section 4.6**; sixth, to the payment of any amounts owing to the Lenders, LC Issuer or Swing Line Lender as a result of any final, non-appealable judgment of a court of competent jurisdiction obtained by any Lender, LC Issuer or the Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrowers, or any of them, as a result of any final, non-appealable judgment of a court of competent jurisdiction obtained by such Borrower or Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed in a final, non-appealable judgment by a court of competent jurisdiction binding on such Defaulting Lender; provided, that, if (x) such payment is a payment of the principal amount of any Loans or LC Obligations in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or LC Obligations were made at a time when the conditions set forth in **Section 6.2** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Obligations and Swing Line Loans are held by the Lenders Pro Rata in accordance with their Revolving Commitments without giving effect to **Section 4.2(a)(iv)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 4.2(a)(ii)** shall be deemed paid to (and the underlying obligations satisfied to the extent of such payment) and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Such Defaulting Lender shall not be entitled to receive any commitment fee, any fees with respect to Letters of Credit (except as provided in clause (B) below) or any other fees hereunder for any period during which that Lender is a Defaulting Lender (and Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive fees with respect to Letters of Credit for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 4.6**.

(C) With respect to any fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LC Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to LC Issuer or Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to LC Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LC Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that (x) the conditions set forth in **Section 6.2** are satisfied at the time of such reallocation (and, unless Borrower Representative shall have otherwise notified Administrative Agent at such time, Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause such Lender's Revolving Credit Exposure at such time to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to **Section 15.25**, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, Borrowers shall, without prejudice to any right or remedy available to them hereunder or under law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lender's Fronting Exposure and (y) second, Cash Collateralize LC Issuer's Fronting Exposure in accordance with the procedures set forth in **Section 2.4**.

(b) Defaulting Lender Cure. If Borrower Representative, Administrative Agent, Swing Line Lender and LC Issuer agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held Pro Rata by the Lenders in accordance with the Revolving Commitments (without giving effect to **Section 4.2(a)(iv)**), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrowers while that Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swing Line Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund Swing Line Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Line Loan, and (ii) LC Issuer shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

4.3 **Borrower Representative.** Each Credit Party hereby designates Parent ("Borrower Representative") as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates and Interest Periods, delivery or receipt of communications (including any Notice of Borrowing, Notice of Conversion/Continuation, any Approved Electronic Communication, any electronic mail notice or request for a Borrowing or the conversion, or continuation of any Loan, or any request for the issuance of any Letter of Credit), preparation and delivery of Borrowing Base Certificates and all attachments thereto, financial reports and Compliance Certificates, receipt and payment of Obligations, requests for waivers, amendments, or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Administrative Agent, LC Issuer, or any Lender. Borrower Representative hereby accepts such appointment. Administrative Agent, LC Issuer, and the Lenders may give any notice to, or communication with, a Credit Party hereunder or under any other Loan Document to or with Borrower Representative on behalf of such Credit Party. Each Credit Party agrees that any notice, election, communication, representation, agreement, or undertaking made on its behalf by Borrower Representative shall be binding upon and enforceable against it. Administrative Agent, LC Issuer, and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, the terms of this **Section 4.3**; provided that, nothing contained herein shall limit the effectiveness of, or the right of Administrative Agent, LC Issuer or any Lender to rely upon, any notice (including without limitation a borrowing or conversion notice), instrument, document, certificate, acknowledgment, consent, direction, certification or any other action delivered by any Credit Party pursuant to this Agreement or any other Loan Document.

4.4 **One Obligation.** The Loans, LC Obligations, and other Obligations shall constitute one general, joint and several obligation of Credit Parties and (unless otherwise expressly provided in any Loan Document) shall be secured by Administrative Agent's Lien upon all Collateral; provided, however, that Administrative Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Credit Party to the extent of any Obligations jointly or severally owed by such Credit Party.

4.5 **Effect of Termination.** On the Commitment Termination Date, all Obligations shall be immediately due and payable, in full, and each Lender may terminate its and its Affiliates' Bank Products (including, but only with the consent of Administrative Agent, any Treasury Services), in accordance with its respective Bank Product Agreements. All undertakings of all Obligors contained in the Loan Documents shall survive any termination, and Administrative Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents, until Payment in Full of all Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Bank Product Obligations (other than Excluded Bank Product Obligations) that have been Cash Collateralized). **Section 2.4, Section 13.1, Section 14.1, Section 14.2, Section 14.3, Section 14.4, Section 15.3, Section 15.4, and Section 15.23**, this **Section 4.5**, the obligation of each Credit Party and each Lender with respect to each indemnity given by it in any Loan Document, including under **Section 8.9, Section 12.5 and Section 15.3**, and each other term, provision, or section of this Agreement or any other Loan Document that states as much, shall survive Payment in Full of the Obligations and any release or termination relating to this Agreement, the other Loan Documents, or any credit facility established hereunder or thereunder. In connection with the foregoing, each Credit Party acknowledges and agrees that Administrative Agent may condition the delivery of any payoff letter on receipt of an unconditional release of all Claims of all Credit Parties against Administrative Agent, LC Issuer and Lenders arising on or before the payment date in respect of the Obligations.

4.6 **Cash Collateral.** At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of Administrative Agent or LC Issuer (with a copy to Administrative Agent) Borrowers shall Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure (after giving effect to **Section 4.2(a)(iv)** and any Cash Collateral provided by the Defaulting Lender). Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to Administrative Agent, for the benefit of LC Issuer, and agrees to maintain, a perfected first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of LC Obligations, to be applied in the manner set forth below. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and LC Issuer as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure, Borrowers will, **ON DEMAND** by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender). Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this **Section 4.6** or **Section 4.2** in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of LC Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such Property as may otherwise be provided for herein. Cash Collateral (or the appropriate portion thereof) provided to reduce any LC Issuer's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this **Section 4.6** following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by Administrative Agent and LC Issuer that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Credit Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this **Section 4.6** may be otherwise applied in accordance with **Section 5.5**) but shall be released upon the waiver or cure of such Default or Event of Default in accordance with the terms of this Agreement, and (y) the Person providing Cash Collateral and LC Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other Obligations.

SECTION 5

PAYMENTS

5.1 **General Payment Provisions.**

(a) All payments of Obligations shall be made in Dollars, without right of offset, recoupment, counterclaim, discount, charge back or other defense of any kind, free of (and without deduction for) any Taxes or other sums, and in immediately available funds, unless otherwise agreed in writing by Administrative Agent in its discretion, not later than 12:00 noon on the due date to the Principal Office of Administrative Agent, the LC Issuer, the Lenders or other obligee. Unless otherwise agreed in writing by Administrative Agent in its discretion, any payment after such time shall be deemed made on the next Business Day. Any payment of a Term SOFR Rate Loan before the end of its Interest Period shall be accompanied by all amounts due under **Section 14.1(c)**. Any prepayment of Loans (whether mandatory or voluntary) shall be applied first to Base Rate Loans and, then, to Term SOFR Rate Loans. Subject to the provisos set forth in **Section 3.1(f)** in respect of "Interest Period," whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of any applicable fee hereunder, but such payment shall be deemed to have been made on the date therefor for all other purposes hereunder.

(b) [Reserved].

5.2 **Repayment of Revolving Loans.**

(a) **Payment on Commitment Termination Date.** Unless otherwise sooner becoming due and payable in accordance with the terms of this Agreement or any other Loan Document, Revolving Loans shall be due and payable in full on the Commitment Termination Date.

(b) Voluntary Prepayments. Revolving Loans may be voluntarily prepaid from time to time, without penalty or premium (subject to **Section 14.1(c)**), as follows: (i) with respect to Base Rate Loans, Borrowers may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount; (ii) with respect to Term SOFR Rate Loans, Borrowers may prepay any such Loans on any Business Day in whole or in part (together with any amounts due pursuant to **Section 14.1**) in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount; and (iii) with respect to Swing Line Loans, Borrowers may prepay any such Loans on any Business Day in whole or in part in any amount. All such prepayments shall be made, unless otherwise agreed by Administrative Agent: (i) upon written notice on the date of prepayment in the case of Base Rate Loans or Swing Line Loans; and (ii) upon not less than three (3) Business Days' prior written notice in the case of Term SOFR Rate Loans, in each case given to Administrative Agent, or the Swing Line Lender, as the case may be, by 11:00 a.m. on the date required (and Administrative Agent will promptly transmit such notice for a Credit Extension written notice to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in **Section 5.2(d)**.

(c) Mandatory Prepayments. Subject to the Term Loan Intercreditor Agreement, and in each case without a corresponding reduction to the Revolving Commitments, within two (2) Business Days following: (i) receipt by any Credit Party or Subsidiary of any Net Proceeds (Asset Dispositions) (other than any such Net Proceeds (Asset Dispositions) received (x) as a result of any Permitted Property Sale or (y) with respect to any Term Priority Collateral (as defined in the Term Loan Intercreditor Agreement)), Credit Parties shall prepay Revolving Loans (or, if the Revolving Loans are, or thereby have been reduced to, \$0, Cash Collateralize the LC Obligations) in an amount equal to one hundred percent (100%) of such Net Proceeds (Asset Dispositions); (ii) receipt by any Credit Party or Subsidiary or Administrative Agent of any Net Proceeds (Loss) (other than any such Net Proceeds (Loss) received with respect to any Term Priority Collateral (as defined in the Term Loan Intercreditor Agreement)), Credit Parties shall prepay the Revolving Loans (or, if the Revolving Loans are or thereby have been reduced to \$0, Cash Collateralize the LC Obligations) in an amount equal to one hundred percent (100%) of such Net Proceeds (Loss); and (iii) receipt by any Credit Party or Subsidiary of any Net Proceeds (Debt), Credit Parties shall prepay the Revolving Loans (or, if the Revolving Loans are or thereby have been reduced to \$0, Cash Collateralize the LC Obligations), in an amount equal to one hundred percent (100%) of the Net Proceeds (Debt); provided that in the case of any Net Proceeds (Asset Dispositions) or Net Proceeds (Loss) so long as (1) no Default or Event of Default shall have occurred and is continuing or would result therefrom, and (2) a Credit Party or Subsidiary reinvests the Net Proceeds (Asset Dispositions) or Net Proceeds (Loss) or a portion thereof in assets useful for the business of a Credit Party within one (1) year after the initial receipt of such monies, or commits to reinvest the monies in such assets within one hundred eighty (180) days after the initial receipt of such monies and completes the reinvestment within one (1) year after the initial receipt of such monies, then the Credit Parties shall have the option to apply such monies to the reinvestment in such assets, unless and to the extent that such applicable period shall have expired without such reinvestment being made or completed, in which case, any amounts not reinvested shall be applied to repayment in accordance with this **Section 5.2(c)**; provided that if such Net Proceeds (Asset Dispositions) or Net Proceeds (Loss) are received by any Credit Party or Subsidiary from any Asset Disposition or Loss, as applicable, of any ABL Priority Collateral, then, in each case, the commitment to reinvest and/or the actual reinvestment of such Net Proceeds (Asset Dispositions) or Net Proceeds (Loss), as applicable, shall be in assets that are ABL Priority Collateral. If the Credit Parties elect to reinvest such Net Proceeds (Asset Dispositions) or Net Proceeds (Loss), then, in each case, subject to the Term Loan Intercreditor Agreement, such Net Proceeds (Asset Dispositions) and/or Net Proceeds (Loss), as applicable, shall be deposited in a Blocked Account maintained with PNC until completion of the reinvestment as contemplated by this **Section 5.2(c)** or the application of such repayment in accordance with this **Section 5.2(d)**.

(d) Collection Account. Subject to the Term Loan Intercreditor Agreement, from and after the date of the first advance of Revolving Loans, but solely during a Cash Dominion Period, the collected balance in the main Collection Account as of the end of each Business Day shall, at the beginning of the next Business Day, be applied, first, to the principal balance of the Revolving Loans (unless such funds are otherwise required to be applied to some other portion of the Obligations in accordance with this Agreement) and then, to other Obligations then due and payable, as determined by Administrative Agent. If, as a result of such application, a credit balance exists, the balance shall not accrue interest in favor of Borrowers and shall be made available to Borrowers as long as no Default or Event of Default exists. Any of the foregoing to the contrary notwithstanding, Administrative Agent may charge back to any Collection Account (or any other account of a Borrower maintained with Administrative Agent) a Payment Item that is returned for inability to collect, plus accrued interest during the period of Administrative Agent's provisional credit for such item before receiving notice of dishonor. Administrative Agent and Lenders assume no responsibility to Borrowers for any lockbox arrangement or Collection Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

5.3 [Reserved].

5.4 Payment of Other Obligations. Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, promptly following written demand therefor.

5.5 Post-Default Allocation of Payments

(a) Allocation. Notwithstanding anything herein or in any other Loan Document to the contrary, during an Event of Default, if so directed by the Required Lenders or at Administrative Agent's discretion, monies to be applied to the Obligations, whether arising from payments by Obligor, realization on Collateral (subject to the Term Loan Intercreditor Agreement), by exercise of setoff, or otherwise, shall be allocated as follows:

- (i) first, to (A) all fees, including fees payable pursuant to this Agreement, the Fee Letter or any other Loan Document, then owing, (B) all costs and expenses, including Extraordinary Expenses, reimbursable by Credit Parties, then owing, (C) all Indemnitee Obligations, and (D) any Protective Advances and any Over Advance Loans (including principal and interest), in each case, to the extent owing to Administrative Agent in its capacity as Administrative Agent;
- (ii) second, to (A) all costs and expenses reimbursable by Credit Parties, and (B) all Indemnitee Obligations, to the extent owing to LC Issuer Indemnitees and any Lender Indemnitees;
- (iii) third, to all amounts owing to Swing Line Lender on Swing Line Loans (including principal and interest);
- (iv) fourth, to all amounts owing to LC Issuer with respect to that portion of the LC Obligations that constitutes unreimbursed draws under Letters of Credit (including principal and interest);

(v) fifth, to all Obligations constituting fees owing to LC Issuer or any Lender, to the extent not already paid above (other than any then constituting Bank Product Obligations);

(vi) sixth, to all Obligations constituting interest owing to any Lender to the extent not already paid above (other than any then constituting Bank Product Obligations);

(vii) seventh, to (A) all Loans, (B) LC Obligations (including the Cash Collateralization of that portion of the LC Obligations constituting then undrawn amounts under outstanding Letters of Credit), and (C) Bank Product Obligations (including the Cash Collateralization of that portion of any Bank Product Obligations that are then contingent or otherwise not yet due and payable), if and to the extent that consistent with **Section 12.13**, the applicable Bank Product Provider thereof has delivered a Secured Party Designation Notice to Administrative Agent, up to the amount of Reserves then being imposed by Administrative Agent in regard thereto;

(viii) eighth, to all other Bank Product Obligations (including the Cash Collateralization of that portion of any Bank Product Obligations that are then contingent or otherwise not yet due and payable), described in **Section 5.5(a)(vii)(C)** above, to the extent not already paid;

(ix) ninth, to all other Obligations, including any other Bank Product Obligations (including the Cash Collateralization of that portion of any Bank Product Obligations and other Obligations that are then contingent or otherwise not yet due and payable), if and to the extent not already paid, other than any then owing to the Defaulting Lenders;

(x) tenth, to all Obligations then owing to the Defaulting Lenders; and

(xi) lastly, the balance, if any, after all of the Obligations have been Paid in Full, to Borrowers or as otherwise then required under Applicable Law.

(b) Manner of Application. In respect of the waterfall of payment application set forth in **Section 5.5(a)**, amounts shall be applied to each of the foregoing categories of Obligations in the order presented above within each category before being applied to the following category. Where applicable, all amounts to be applied to a given category will be applied on a pro rata basis among those entitled to payment in such category.

(c) Bank Product Obligations. In determining the amount to be applied to Bank Product Obligations within clauses seventh, eighth and ninth above, the pro rata share of each Bank Product Provider (other than PNC and its Affiliates) shall be based on the lesser of (x) the estimated maximum amount thereof to be created or incurred as so designated in the then most recent Secured Party Designation Notice from such Bank Product Provider to Administrative Agent and (y) the actual amount of such Bank Product Obligations then owing to such Bank Product Provider, which each Bank Product Provider (other than PNC and its Affiliates) shall be obliged to designate to Administrative Agent at the time of, and as a condition to, its receipt of such amounts. Administrative Agent shall have no duty to investigate whether such Bank Product Obligations are actually owing to such Bank Product Provider in such designated amount, and, instead, shall be entitled to rely in all respects on such Bank Product Provider's designation thereof. The pro rata share of PNC and its Affiliates shall not be subject to the foregoing limitations, but shall be determined and reported directly to Administrative Agent by PNC.

(d) Secured Parties as Beneficiaries. The allocations set forth in this **Section 5.5** are solely to determine the rights and priorities of the Secured Parties among themselves and may be changed by agreement among them at any time and from time to time without notice to, or the consent of, any Credit Party. No Credit Party is entitled to any benefit under this **Section 5.5** or has any standing to enforce this **Section 5.5**.

(e) Excluded Swaps. Excluded Swap Obligations with respect to any Credit Party shall not be paid with amounts received from such Credit Party or such Credit Party's assets, but appropriate adjustments shall be made with respect to payments from other Credit Parties to preserve the allocation to Obligations otherwise set forth above in **Section 5.5(a)**.

(f) Application of Payments: Erroneous Application. In each case, subject to the Term Loan Intercreditor Agreement, Administrative Agent shall have the continuing and exclusive right to apply or reverse and re-apply any payment in respect of the Obligations and, after the occurrence and during the continuance of an Event of Default or a Cash Dominion Event, or even in the absence of the existence of any Event of Default or Cash Dominion Event to the extent necessary to correct any manifest error, any and all proceeds of Collateral, to any portion of the Obligations. In each case, subject to the Term Loan Intercreditor Agreement, Administrative Agent shall not be liable for any application of amounts made by it pursuant to this **Section 5.5** if made in Good Faith (including, without limitation, with respect to negligent application or application subject to strict liability) and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount ought to have been made shall be to recover the amount from the Person that actually received it (and, if such amount was received by any Secured Party, then such Secured Party, by accepting the benefits of this Agreement, agrees to return it).

5.6 Sharing of Payments. If any Lender shall, by exercising any claim, counterclaim, right of setoff (including any permitted under **Section 15.6**), charge back, discount, defense, qualification, or exception or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such Obligations greater than its Pro Rata Share thereof as provided herein, then, the Lender receiving such greater proportion shall (a) notify Administrative Agent of such fact and (b) purchase (for cash at face value) participations in the Loans and such other Obligations of the other Lenders, or make such other adjustments as shall be equitable (as determined by Administrative Agent), so that the benefit of all such payments shall be shared by the Lenders in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, based on their respective Pro Rata Shares thereof; provided, however, that: (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by a Credit Party pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Commitments, Loans, or participations in Swing Line Loans or LC Obligations to any Transferee; and (iii) no Lender or Participant may exercise any right of setoff except as provided in **Section 15.6**.

5.7 Nature and Extent of each Borrower's Liability

(a) Joint and Several Liability: Guarantee. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally Guarantees to Administrative Agent, LC Issuer, each Lender and each other Secured Party the prompt payment and performance of, all Obligations and all agreements under the Loan Documents. Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of each of the other Borrowers to accept joint and several liability for the payment and performance of the Obligations, not merely as a surety but also as a co-debtor, it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower and all Borrowers without preferences or distinctions between or among them. Each Borrower agrees that its Guarantee obligations hereunder with respect to the Obligations of each other Borrower constitute a continuing Guarantee of payment and not of collection, that such obligations shall not be discharged until Payment in Full of the Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Bank Product Obligations (other than Excluded Bank Product Obligations) that have been Cash Collateralized), and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination, or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument, or agreement to which any Credit Party is or may become a party or be bound; (ii) the absence of any action by Administrative Agent, LC Issuer, each Lender or any other Secured Party to enforce this Agreement (including this **Section 5.7**) or any other Loan Document, or any waiver, consent, or indulgence of any kind given by Administrative Agent, LC Issuer, any Lender or any Secured Party with respect thereto; (iii) the existence, value, or condition of, or failure to perfect a Lien, or to preserve rights against, any security or Guarantee for the Obligations or any action, or the absence of any action, by Administrative Agent, LC Issuer, or any Lender in respect thereof (including the release of any security or Guarantee); (iv) the insolvency of any other Credit Party or Subsidiary; (v) any election by Administrative Agent, LC Issuer, any Lender or any other Secured Party in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing of Debt or grant of a Lien by any other Credit Party, whether as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of Administrative Agent, LC Issuer, any Lender or any other Secured Party as against any other Credit Party for the repayment of any Obligations whether under Section 502 of the Bankruptcy Code or otherwise; (viii) any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding in respect of any other Credit Party; or (ix) any other action, event, circumstance or condition that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Payment in Full of all Obligations.

(b) Waivers.

(i) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Administrative Agent, any Lender or any other Secured Party to marshal assets or to proceed against any Credit Party, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor, or accommodation co-obligor other than Payment in Full of all Obligations. It is agreed among each Borrower, Administrative Agent, LC Issuer and the Lenders that the provisions of this **Section 5.7** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Administrative Agent, LC Issuer and the Lenders would decline to make Loans and issue Letters of Credit. Each Borrower acknowledges that its Guarantee pursuant to this **Section 5.7** is necessary to the conduct and promotion of its business and can be expected to benefit such business.

(ii) Administrative Agent, LC Issuer, Lenders and any other Secured Parties may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this **Section 5.7**. If, in taking any action in connection with the exercise of any rights or remedies, Administrative Agent, LC Issuer or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Credit Party or other Person, whether because of any Applicable Law pertaining to “election of remedies” or otherwise, each Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Credit Party might otherwise have had. Each of Borrowers waives, to the fullest extent permitted by Applicable Law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance that operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the other Borrowers. Any election of remedies that results in denial or impairment of the right of Administrative Agent, LC Issuer or any Lender to seek a deficiency judgment against any Credit Party shall not impair any Borrower’s obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as non-judicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower’s rights of subrogation against any other Borrower, any other Credit Party or any other Person. Administrative Agent may bid all or a portion of the Obligations at any foreclosure or trustee’s sale or at any private sale, and the amount of such bid need not be paid by Administrative Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Administrative Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations Guaranteed under this **Section 5.7**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Administrative Agent, LC Issuer, any Lender or any other Secured Party might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution. Notwithstanding anything herein to the contrary, each Borrower’s liability under this **Section 5.7** shall be limited to the greater of (A) all amounts for which such Borrower is primarily liable, as described below, and (B) such Borrower’s Allocable Amount (as defined below).

(i) If any Borrower makes a payment under this **Section 5.7** of any Obligations, other than amounts for which such Borrower is primarily liable (a “Guarantor Payment”) that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower’s Allocable Amount bore to the total Allocable Amounts of all Borrowers, then, such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately before such Guarantor Payment. The “Allocable Amount” for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this **Section 5.7** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any other applicable Debtor Relief Law.

(ii) Nothing contained in this **Section 5.7** shall limit the liability of any Borrower to pay Loans made directly or indirectly to that Borrower (including Loans advanced to any other Borrower and then remade or otherwise transferred to, or for the benefit of, such Borrower), LC Obligations relating to Letters of Credit issued to support such Borrower's business, and all accrued interest, fees, expenses, and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder. Administrative Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and Letters of Credit upon a separate calculation of Excess Availability for each Borrower and to restrict the disbursement and use of such Loans and Letters of Credit to such Borrower.

(d) Joint Enterprise. Each Borrower has requested that Administrative Agent, LC Issuer and the Lenders make this credit facility available to Borrowers on a combined basis, to finance Borrowers' business most efficiently and economically. Borrowers' business is a mutual and collective enterprise, and Borrowers believe that consolidation of their credit facilities will enhance the borrowing power of each Borrower and ease the administration of their relationship with credit providers (including Administrative Agent, LC Issuer and the Lenders), all to the mutual advantage of Borrowers. Borrowers acknowledge and agree that Administrative Agent, LC Issuer and Lenders' willingness to extend credit to Borrowers and to administer the Collateral on a combined basis, as set forth herein, is done solely as an accommodation to Borrowers and at Borrowers' request.

(e) Subordination. Each Borrower hereby subordinates any claims, including any rights at law or in equity, to payment, subrogation, reimbursement, exoneration, contribution, indemnification, or set off, that it may have at any time against any other Credit Party, howsoever arising, to Payment in Full of all Obligations.

(f) Keepwell. Borrowers hereby agree to cause each Qualified ECP Guarantor to jointly and severally absolutely, unconditionally and irrevocably undertake to provide such funds or other support as may be needed from time to time by each Specified Credit Party to honor all of such Specified Credit Party's obligations under its Guarantee and the Security Documents in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under its undertaking pursuant to this **Section 5.7** for the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under its Guarantee, voidable under the Bankruptcy Code and other applicable Debtor Relief Laws, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this **Section 5.7** shall remain in full force and effect until Payment in Full of the Obligations. Each Borrower, for itself and on behalf of each Qualified ECP Guarantor, intends that this **Section 5.7** (and any corresponding provision of any applicable Guarantee) constitute, and this **Section 5.7** (and any corresponding provision of any applicable Guarantee) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Specified Credit Party for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

(g) Inquiry. Each Borrower represents and warrants to Administrative Agent, LC Issuer and Lenders that such Borrower is currently informed of the financial position of the other Borrowers and of all other circumstances that a diligent inquiry would reveal and that bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Administrative Agent, LC Issuer and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants to Administrative Agent, LC Issuer and Lenders that such Borrower will continue to keep informed of the other Borrowers' financial position and of all other circumstances that bear upon the risk of nonpayment or non-performance of the Obligations.

(h) Subrogation Generally. Notwithstanding any term of this Agreement or of any Loan Document that may be to the contrary, each Borrower further hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this **Section 5.7**, including any rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Administrative Agent, LC Issuer or any Lender against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Obligations have been Paid in Full. Any claim that any Borrower may have against any other Borrower or another Credit Party with respect to any payments to Administrative Agent, LC Issuer or any Lender hereunder or under any of the Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior Payment in Full of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its Debts or its Properties, whether voluntary or involuntary, all such Obligations shall be Paid in Full before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower in regard thereto. If any such amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust by such Borrower for the benefit of Administrative Agent, LC Issuer and Lenders, and shall promptly be paid to Administrative Agent to be credited and applied to the Obligations and all other amounts payable under this Agreement, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any such rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (a "Foreclosed Borrower"), including after Payment in Full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower, whether pursuant to this Agreement or otherwise.

SECTION 6

CONDITIONS PRECEDENT

6.1 Conditions Precedent to Initial Loans. In addition to any other conditions precedent set forth in this Agreement or any other Loan Document, none of Administrative Agent, LC Issuer, nor any Lender shall be required to fund any requested Loan, issue any Letter of Credit, or otherwise make any extension of credit or financial accommodation to or for the benefit or account of any Borrower hereunder until the date that each of the following conditions precedent has been satisfied (as determined by Administrative Agent) or waived in accordance with the terms of this Agreement:

(a) Loan Documents. Notes shall have been executed by Borrowers and delivered to each Lender that, before the Closing Date, has requested the issuance of a Note. This Agreement and each other Loan Document to be delivered on the Closing Date shall have been duly executed and delivered to Administrative Agent by each of the signatories hereto and thereto, and each Credit Party shall be in compliance with all terms hereof and thereof.

(b) Evidence of Filings; Lien Searches. Administrative Agent shall have received acknowledgments of all filings or recordings necessary to perfect its Liens in the Collateral and UCC, Lien, and Intellectual Property searches and all other searches and other evidence satisfactory to Administrative Agent that such Liens are the only Liens upon the Collateral (other than Permitted Liens).

(c) Collection Accounts. Subject to **Section 8.16**, Administrative Agent shall have received duly executed Article 9 Control Agreements and related agreements establishing each Collection Account and, as applicable, each related lockbox, in form and substance and with financial institutions, satisfactory to Administrative Agent.

(d) Closing Certificate. Administrative Agent shall have received a certificate, in form and substance satisfactory to it, from a knowledgeable Responsible Officer of each Credit Party certifying that, after giving effect to the initial Loans, any initial Letters of Credit and the other transactions contemplated herein occurring on the Closing Date, among other things, (A) all consents, approvals, authorizations, registrations, or filings required to be made or obtained by Borrowers and the other Credit Parties, if any, in connection with this Agreement and the other Loan Documents and the transactions contemplated herein and therein have been obtained and are in full force and effect, (B) no investigation or inquiry by any Governmental Authority regarding this Agreement and the other Loan Documents and the transactions contemplated herein and therein is ongoing, (C) since the date of the annual audited financial statements provided as part of the Historical Financial Statements, there has been no event or circumstance that could be reasonably expected to have a Material Adverse Effect, (D) the annual audited financial statements provided as part of the Historical Financial Statements were prepared in accordance with GAAP, except as noted therein, and fairly present in all material respects the financial position and results from operations of Holdings and its Subsidiaries, (E) Credit Parties, taken as a whole, are Solvent after giving effect to the transactions contemplated hereby and the incurrence of all Debt (including Obligations) thereto, and (F) the conditions set forth in **Section 6.2** have been met as of the Closing Date.

(e) Officer's Certificates. Administrative Agent shall have received a certificate of the corporate (company) secretary (or another Responsible Officer) of each Credit Party, certifying (i) that attached copies of such Credit Party's Organizational Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted by the appropriate Governing Body, have not been amended, modified, or revoked, and constitute all resolutions adopted with respect to the credit facility contemplated in this Agreement and the other Loan Documents; and (iii) to the title, name, and signature of each Person authorized to sign the Loan Documents on behalf of such Credit Party. Administrative Agent may conclusively rely on each such certificate until it is otherwise notified by the applicable Credit Party in writing.

(f) Organizational Documents; Good Standing Certificates. Administrative Agent shall have received copies of the Organizational Documents of each Credit Party, certified currently (if requested by Administrative Agent) by the Secretary of State or other appropriate official of such Credit Party's jurisdiction of organization. Administrative Agent shall have received good standing certificates for each Credit Party issued by the Secretary of State or other appropriate official of such Credit Party's jurisdiction of organization and, if requested by Administrative Agent, each jurisdiction where such Credit Party's business activities or ownership of Property necessitates qualification. If requested by Administrative Agent and to the extent available, Administrative Agent shall have received a certificate indicating payment of all corporate or other franchise taxes certified by the appropriate taxing Governmental Authority.

(g) Opinions of Counsel. Administrative Agent shall have received a written opinion (which shall cover, among other things, authority, legality, validity, execution and delivery, binding effect, enforceability, no conflict, violation, or breach of Organizational Documents, Applicable Law, or material agreements, and creation and perfection of Liens) of counsel to the Credit Parties, as well as any local counsel to Credit Parties or Administrative Agent, in form and substance satisfactory to Administrative Agent.

(h) Insurance. Administrative Agent shall have received copies of policies and certificates of insurance for the insurance policies carried by Credit Parties, all of which shall be in compliance with **Section 8.3** and any other provisions of the Loan Documents relevant thereto, together with, subject to **Section 8.16**, such lender's loss payable and additional insured endorsements showing Administrative Agent as agent for the Secured Parties, each of which shall be in form and substance satisfactory to Administrative Agent.

(i) Due Diligence. Administrative Agent shall have completed its business, financial and legal due diligence of Credit Parties required to be completed prior to the Closing Date, including having received the Historical Financial Statements, Projections (P&L only) for the twelve (12) month period beginning with the Fiscal Month ending as of July 31, 2023, month-by-month, for the two (2) quarter period beginning with the Fiscal Quarter ending as of September 30, 2024, quarter-by-quarter, and for the one (1) Fiscal Year period ending as of December 31, 2025, annually, and all credit investigations and background checks, and the results, form, and substance of each of the foregoing items shall be reasonably satisfactory to Administrative Agent.

(j) Collateral Examination. Administrative Agent shall have completed Collateral examinations and received appraisals, the results of which shall be satisfactory in form and substance to Administrative Agent, of the Accounts, Inventory, General Intangibles and Equipment of each Credit Party and all books and records in connection therewith.

(k) Material Adverse Effect. No event or circumstance that, taken alone or in conjunction with other events or circumstances has had, or could be expected to have, a Material Adverse Effect shall have occurred since the date of the audited financial statements of the Tested Companies described in the Historical Financial Statements.

(l) Debt and Capital Structure. Administrative Agent shall be satisfied with the Credit Parties' Debt and capital structure.

(m) Payment of Fees. Borrowers shall have paid all fees and expenses to be paid to Administrative Agent and Lenders on the Closing Date (including pursuant to any Fee Letter) or Administrative Agent shall be satisfied with all arrangements made to pay such fees and expenses on the Closing Date with the proceeds of Loans to be made on the Closing Date.

(n) Borrowing Base Certificate. Administrative Agent shall have received a Borrowing Base Certificate (and all supporting reports as Administrative Agent may require) prepared as of the Closing Date. Upon giving effect to the initial funding of Loans and issuance of Letters of Credit and the payment by Borrowers of all fees and expenses incurred in connection herewith paid on the Closing Date and the subtraction of the aggregate face amount of all of Borrowers' and the Subsidiaries' accounts payable that are more than sixty (60) days past invoice due date, Excess Availability plus the amount of all unencumbered (other than Liens (x) in favor of the Secured Parties and (y) in favor of the Term Loan Agent) and unrestricted cash and Cash Equivalents maintained (i) with PNC in a blocked account and (ii) at Regions Bank so long as Borrowers provide evidence of the funds located in such Regions Bank account(s) (such evidence being in form and substance acceptable to Agent at its sole discretion), in each case of (i) and (ii) that are not included in the calculation of the Borrowing Base shall equal or exceed \$37,500,000.

(o) Governmental and Third Party Consents. Administrative Agent shall have received certified or executed (as applicable) copies all governmental, shareholder, and Third Party Claimant consents and approvals and Third Party Claimant Agreements that it has requested in connection with the transactions contemplated hereby and, to the extent applicable, all waiting periods relating thereto shall have expired and no investigation or inquiry by any Governmental Authority regarding this Agreement or any other Loan Document or any transaction contemplated herein shall be ongoing.

(p) Contract Review. Administrative Agent shall have received and reviewed all Material Contracts of the Credit Parties including all material leases, union contracts, labor contracts, vendor supply contracts, license agreements and distributorship agreements and such contracts and agreements shall be satisfactory in all respects to Administrative Agent.

(q) Payoff Letter. Administrative Agent shall have received a payoff letter, in form and substance satisfactory to Administrative Agent, regarding all Regions Bank Debt that will be paid on the Closing Date with proceeds of Loans.

(r) No Litigation. There shall be no Adverse Proceeding in which any Credit Party or any Subsidiary is a party defendant that would constitute an Event of Default under **Section 11.1(d)** due to a breach of the representation in **Section 7.16** or that Administrative Agent determines would reasonably be expected to have a Material Adverse Effect.

(s) Payment Authorization. Administrative Agent shall have received payment authorizations (including the amount thereof) with respect to the disposition of the proceeds of the Loans to be disbursed on the Closing Date.

(t) PATRIOT Act. The Lenders shall have received, sufficiently in advance of the Closing Date, all documentation and other information required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act, including, without limitation, a Beneficial Ownership Certification in relation to each Credit Party and any other Obligor that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation.

(u) Term Loan Debt. (i) All conditions precedent to the effectiveness of the Term Loan Credit Agreement and the other Term Loan Debt Documents (as applicable), on terms reasonably acceptable to Administrative Agent, shall have been satisfied or waived by the Term Loan Lenders in accordance with the Term Loan Credit Agreement, (ii) Term Loan Agent, on behalf of the Term Loan Lenders, shall have executed and delivered the Intercreditor Agreement, which shall be in form and substance reasonably satisfactory to Administrative Agent, (iii) Administrative Agent shall have received fully-executed copies of the Term Loan Debt Documents, the terms and conditions of which shall be reasonably acceptable to Administrative Agent, and (iv) Borrowers shall have received (or will receive concurrently with the funding of the Loans on the Closing Date) at least \$56,000,000 of gross proceeds of the Term Loan Debt funded by the Term Loan Lenders in accordance with the Term Loan Debt Documents.

For purposes of determining compliance with the conditions specified in this **Section 6.1**, Administrative Agent and each Lender that has signed and delivered this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to Administrative Agent or a Lender unless Administrative Agent or the Lenders, as applicable, shall have received notice from a Lender or Administrative Agent, as applicable, prior to the proposed Closing Date specifying its objection thereto.

6.2 **Conditions Precedent to All Extensions of Credit.** Administrative Agent, LC Issuer and, except to the extent required under **Section 2.1**, the Lenders shall not be required to fund any Loans, issue any Letter of Credit or grant any other financial accommodation to or for the benefit of Borrowers, unless each of the following conditions precedent are satisfied or waived in accordance with the terms hereof:

(a) **No Default.** No Default or Event of Default shall exist at the time of, or result from, such funding, issuance, or grant;

(b) **Accuracy of Representations and Warranties.** The representations and warranties of each Credit Party in this Agreement and the other Loan Documents shall be true and correct in all material respects on the date of, and after giving effect to, such funding, issuance, or grant (provided that any representation or warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to such qualification) in all respects on such effective date), except for those representations and warranties that expressly relate to an earlier date, in which case, they shall have been true and correct in all material respects as of such date;

(c) **Revolving Loan Conditions.** Solely with respect to a borrowing of a Revolving Loan, Administrative Agent shall have received a Notice of Borrowing in accordance with the terms of this Agreement;

(d) **Holdings.** Holdings shall be in compliance with **Section 9.15**;

(e) **LC Conditions.** With respect to issuance of any Letter of Credit, each of the LC Conditions shall be satisfied or waived in accordance with the terms of this Agreement; and

(f) **Defaulting Lender.** Solely with respect to the issuance of any Letter of Credit, there is no Defaulting Lender at the time such Letter of Credit is to be issued, unless arrangements satisfactory to LC Issuer shall been made with respect to the undivided interest and participation of such Defaulting Lender in and to such Letter of Credit and all other Letters of Credit then outstanding, which arrangements may include Borrowers’ posting of Cash Collateral in an amount equal to such Defaulting Lender’s interest and participation therein on terms satisfactory to Administrative Agent and LC Issuer.

Each request (or deemed request) by Borrowers for funding of a Loan, issuance of a Letter of Credit, or grant of an accommodation shall constitute a representation by Credit Parties that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance, or grant.

SECTION 7

REPRESENTATIONS AND WARRANTIES

To induce Administrative Agent, LC Issuer, the Lenders and each other Secured Party, as applicable, to enter into this Agreement, provide their respective Commitments, make Loans and permit them to remain outstanding, issue Letters of Credit, and make any other extension of credit or financial accommodation hereunder or under the other Loan Documents, each Credit Party makes the following representations and warranties, all of which shall survive the execution and delivery of this Agreement and the other Loan Documents, and each of which shall be deemed made as of the Closing Date and as of the date of each request for the making of a Loan, the issuance of a Letter of Credit, or the making of any other extension of credit or financial accommodation hereunder or under the other Loan Documents:

7.1 Organization and Qualification. Holdings, each Credit Party and each of their respective Subsidiaries (i) is a corporation, limited liability company, or limited partnership, as applicable, duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation, organization, or formation, (ii) has all requisite power and authority to own and operate its Properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby, and (iii) is duly qualified, authorized to do business, and is in good standing in each jurisdiction where failure to be so qualified, authorized or in good standing would reasonably be expected to have a Material Adverse Effect.

7.2 Power and Authority. Each Credit Party and each Subsidiary is duly authorized to execute, deliver, and perform its Obligations under each of the Loan Documents to which it is a party. Each Credit Party's and Subsidiary's execution, delivery, and performance of each of the Loan Documents to which it is a party have been duly authorized by all necessary corporate, company or partnership action. The execution, delivery and performance by the Credit Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not (a) violate (i) any provision of any Applicable Law relating to any Credit Party, (ii) in any material respect any of the Organizational Documents of any Credit Party, or (iii) any order, judgment or decree of any Governmental Authority binding on any Credit Party (or its Property), except, in the case of clauses (a)(i) and (a)(iii), as would not reasonably be expected to have a Material Adverse Effect; (b) except as would not reasonably be expected to have a Material Adverse Effect, conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any other Material Contract of any Credit Party; (c) result in or require the creation or imposition of any Lien upon any of the Properties of any Credit Party (other than any Liens created under any of the Loan Documents in favor of Administrative Agent for the benefit of the holders of the Obligations) whether now owned or hereafter acquired; or (d) require any approval of stockholders, members or partners of any Credit Party that has not been obtained or any approval or consent of any Person under any Material Contract of any Credit Party. The execution, delivery and performance by the Credit Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents applicable thereto do not and will not require, as a condition to the effectiveness thereof, any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Administrative Agent for filing and/or recordation, as of the Closing Date and other filings, recordings or consents that have been obtained or made, as applicable.

7.3 Enforceability. Each Loan Document has been duly executed and delivered by each Credit Party that is a party thereto and constitutes a legal, valid, and binding obligation of each Credit Party that is a party thereto, enforceable in accordance with its terms, except as enforceability may be limited by any Debtor Relief Law or by general principles of equity (regardless of whether such enforcement is considered in a proceeding at law or in equity).

7.4 Capital Structure. Schedule 7.4 sets forth as of the Closing Date, (a) for each Credit Party and each of its Subsidiaries: (i) such Person's true and correct legal name; and (ii) such Person's jurisdiction of incorporation, organization, or formation, as applicable; and (b) for each Subsidiary of Parent: (i) such Person's authorized, issued and outstanding Equity Interests; (ii) the number, type or class, and holders, of such Person's issued and outstanding Equity Interests, together with the number and percentage of Equity Interests held by each such holder and whether such Equity Interests constitute Voting Equity Interests or otherwise; and (iii) all agreements binding on any such holders with respect to their interests or rights in and to such Equity Interests. In the five (5) years preceding the Closing Date, no Credit Party or any Subsidiary of a Credit Party has consummated any Acquisition or otherwise acquired any substantial part of the assets of any Person or been the surviving Entity in a merger or combination, except as may be set forth on Schedule 7.4. Each Credit Party and each Subsidiary has good title to its Equity Interests in its Subsidiaries, free and clear of all Liens other than Permitted Liens, and all Equity Interests of the Subsidiaries of the Credit Parties are duly issued, fully paid, and, to the extent applicable, non-assessable. Except as set forth on Schedule 7.4, as of the Closing Date, there are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights, or powers of attorney relating to Equity Interests of any Subsidiary of Parent. None of the Equity Interests issued by any Subsidiary of Parent has been issued in violation of the Exchange Act or the securities, "Blue Sky," or any other Applicable Law of any applicable jurisdiction. Except as set forth on Schedule 7.4, as of the Closing Date, no Credit Party or any of its Subsidiaries is subject to any obligation (contingent or otherwise) to make any Restricted Payment with respect to any Equity Interests issued by such Person, and no Subsidiary of Parent is subject to any obligation (contingent or otherwise) to register any of its Equity Interests, and none of such Equity Interests is subject to any Restrictive Agreement, other than as set forth in Schedule 7.17 or otherwise permitted hereunder.

7.5 Title to Properties; Priority of Liens

(a) Each Credit Party and each of its Subsidiaries has good record and marketable title to (or valid leasehold interests in, or easements or other limited interest in) all of its Property, including the Mortgaged Property, free and clear of all Liens other than Permitted Liens. Each Credit Party and each of its Subsidiaries has paid and discharged all claims that, if unpaid, could become a Lien (other than a Permitted Lien) on its Properties. Administrative Agent's Liens in the Collateral are duly perfected and constitute first-priority Liens, subject only to Permitted Liens.

(b) Each Credit Party and each of its Subsidiaries has good record and marketable title in fee simple to (or valid leasehold interests in, or easements or other limited interest in) all Real Estate reasonably necessary or used in the ordinary conduct of its business.

7.6 Licenses and Permits. Holdings, each Credit Party and each of their respective Subsidiaries has obtained and holds in full force and effect, all franchises, licenses, leases, permits, certificates, authorizations, qualifications, easements, rights of way, and other rights and approvals that are necessary for the operation of its business as presently conducted and as proposed to be conducted and whose absence or failure to obtain or hold would reasonably be expected to result in a Material Adverse Effect. Neither any Credit Party nor any of its Subsidiaries is in violation of the terms of any such franchises, licenses, leases, permits, certificates, authorizations, qualifications, easements, rights of way, or right or approval in any such case that would reasonably be expected to result in a Material Adverse Effect.

7.7 Real Estate.

(a) All Real Estate leased (or subleased) by a Credit Party or any of its Subsidiaries as of the Closing Date, together with the name of the lessor (and, as applicable, sub-lessor) of such Real Estate, the term thereof, and the annual rents payable thereunder, are set forth in Schedule 7.7(a).

(b) The leases (and subleases) of each Credit Party and each of its Subsidiaries are valid, enforceable, and in full force and effect.

(c) No Credit Party or any of its Subsidiaries has made any pledge, mortgage, assignment, or sublease of any of its rights under such leases (or subleases) except pursuant to Permitted Liens under clauses (h) and (m) of **Section 9.2** and Permitted Asset Dispositions and, to each Credit Party's knowledge, there is no default or condition that, with the passage of time or the giving of notice, or both, would constitute a material default on the part of a Credit Party or Subsidiary under such leases (or subleases) that would reasonably be expected to have a Material Adverse Effect.

(d) All Real Estate owned by each Credit Party or a Subsidiary of a Credit Party as of the Closing Date is set forth in **Schedule 7.7(d)**. As of the Closing Date, no Credit Party or any of its Subsidiaries owns, leases, or uses any Real Estate other than as set forth on **Schedule 7.7(d)**.

(e) Each Credit Party and each of its Subsidiaries owns good record and marketable fee simple title to all of its owned Real Estate, and none of its respective owned Real Estate is subject to any Liens, except Permitted Liens.

(f) As of the Closing Date, no Credit Party or any of its Subsidiaries owns or holds, or is obligated under or a party to, any option, right of first refusal, or any other contractual right to purchase, acquire, sell, assign, or dispose of any Real Estate owned or leased (or subleased) by it.

(g) As of the Closing Date, no Credit Party nor any of its Subsidiaries has received written notice of any pending or contemplated condemnation or expropriation proceeding affecting any of the Real Estate necessary or used in the ordinary conduct of such Credit Party's business or any sale or disposition thereof in lieu of condemnation or expropriation.

(h) To the knowledge of each Credit Party, all certificates of occupancy and other Permits (defined below) legally required with respect to the occupancy and use of the Real Estate have been obtained and are currently in effect. To the knowledge of each Credit Party, the Real Estate and each Credit Party's or any of its Subsidiaries' use and operation thereof comply in all material respects with all (i) federal, state and local Laws (including applicable building, health, fire, safety, subdivision, zoning and other similar regulatory laws, ordinances, codes and regulations and the Americans with Disabilities Act) (collectively, "**Property Laws**"), and (ii) insurance requirements applicable to said buildings and improvements. No Credit Party nor any of its Subsidiaries has received any written notice of any non-compliance with any Property Law which has not been resolved.

7.8 Casualties; Taking of Properties; etc. Since the date of the most recent audited financial statements of the Tested Companies described in the Historical Financial Statements, neither the business nor the Properties of any Credit Party or any of its Subsidiaries has been affected as a result of any fire, explosion, earthquake, flood, drought, windstorm, accident, strike or other labor disturbance, embargo, requisition or taking of Property or cancellation of contracts, permits or concessions by any Governmental Authority, riot, activities of armed forces, or acts of God, or of any public enemy, that, individually or collectively, would reasonably be expected to have a Material Adverse Effect.

7.9 Deposit Accounts; Securities Accounts; Commodity Accounts. None of Holdings, any Credit Party or any of their respective Subsidiaries has, or otherwise maintains, any Deposit Accounts, Securities Accounts or Commodity Accounts, except for those listed in **Schedule 7.9**.

7.10 Intellectual Property.

(a) **Schedule 7.10(a)** sets forth with respect to each Credit Party and each of its Subsidiaries as of the Closing Date (a) all of such Person's registrations and applications for Intellectual Property, including registered domain names, and material unregistered Intellectual Property, including the jurisdiction where such Intellectual Property is registered, the applicable patent or registration number and application number, the record owner and the legal owner; and (b) subject to **Section 8.16**, all of such Person's Licenses (other than (i) non-exclusive trademark Licenses and similar non-exclusive licenses granted to or by vendors, suppliers, customers, franchisees or branding or marketing partners in the Ordinary Course of Business and (ii) any Licenses to software to the extent such software is fungible, off-the-shelf and reasonably available for purchase by Administrative Agent) (collectively, the "**Proprietary Rights**"). Subject to **Section 8.16**, the Proprietary Rights set forth on **Schedule 7.10(a)**, together with the Intellectual Property licensed to a Credit Party or Subsidiary pursuant to an agreement subject to a scheduling exception in the immediately preceding sentence, are all those used in the businesses of Credit Parties and their Subsidiaries as of the Closing Date. As of the Closing Date, no Credit Party or any of its Subsidiaries has granted any license or sold or otherwise transferred any interest in any of the Proprietary Rights to any other Person except non-exclusive licenses to vendors, suppliers, customers, franchisees or branding or marketing partners in the Ordinary Course of Business or as set forth on **Schedule 7.10(a)**.

(b) No Credit Party nor any of its Subsidiaries' use of any of the Proprietary Rights or other Intellectual Property used by any Credit Party or any of their Subsidiaries in the conduct of their business materially infringes upon, misappropriates, or otherwise violates the rights of any Third Party in or to such Proprietary Rights, and, except as set forth on **Schedule 7.10(b)**, no (i) proceeding has been instituted against any Credit Party or any of its Subsidiaries that is presently outstanding alleging that the use of any of the Proprietary Rights or such other Intellectual Property infringes upon, misappropriates or otherwise violates the rights of any Third Party in or to any of the Proprietary Rights or such other Intellectual Property rights or (ii) written notice received by any Credit Party or any of its Subsidiaries is presently outstanding alleging that the use of any of the Proprietary Rights or such other Intellectual Property materially infringes upon, misappropriates or otherwise violates the rights of any Third Party in or to any of the Proprietary Rights or such other Intellectual Property rights. No Credit Party nor any of its Subsidiaries has given notice to any Person that such Person is infringing, misappropriating, or otherwise violating any of the Proprietary Rights, which infringement would reasonably be expected to have a Material Adverse Effect. To the knowledge of each Credit Party, no Person is infringing, misappropriating, or otherwise violating any of the Proprietary Rights, which infringement would reasonably be expected to have a Material Adverse Effect.

(c) Each Credit Party's and each of its Subsidiary's material Property Rights are valid and enforceable rights of such Person and will not cease to be valid and in full force and effect by reason of the execution and delivery of this Agreement or the Loan Documents or the consummation of the transactions contemplated hereby or thereby. Credit Parties have delivered to Administrative Agent complete and correct copies of each License (other than (i) non-exclusive trademark and similar licenses granted by vendors, suppliers, customers, franchisees or branding or marketing partners in the Ordinary Course of Business and (ii) any software Licenses to the extent such software is fungible and reasonably available for purchase by Administrative Agent for a nominal sum per licensed user in favor of any Credit Party, including all schedules and exhibits thereto. Each such License sets forth the entire agreement, arrangements, or understandings, written or oral, relating to the matters covered thereby or the rights of any Credit Party is the legal, valid, and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms. Except as would not reasonably be expected to have a Material Adverse Effect, no default under any such License by any such party has occurred, nor does any defense, discount, right of offset, deduction or counterclaim exist thereunder in favor of any such party. No party to any License has given any Credit Party notice of its intention to cancel, terminate, or fail to renew any such License, the loss of which would reasonably be expected to have a Material Adverse Effect.

7.11 **Financial Statements; Projections.**

(a) Annual Audit. The audited Consolidated balance sheet of Holdings and the Tested Companies for the most recent Fiscal Year ended, and the related Consolidated statements of income or operations, stockholders' equity (deficit) and cash flows of Holdings and the Tested Companies for such Fiscal Year, including the notes thereto, copies of which have been furnished to Administrative Agent and each Lender (i) were prepared in accordance with GAAP throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial position of Holdings and the Tested Companies as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material Debts and other liabilities, direct or contingent, of Holdings and the Tested Companies as of the date thereof, including liabilities for taxes, material commitments and Debt.

(b) Interim Quarterly Reports. The unaudited Consolidated balance sheet of Holdings and the Tested Companies for the most recent Fiscal Quarter ended, and Fiscal Year to date, and the related Consolidated statements of income or operations, stockholders' equity (deficit) and cash flows of Holdings and the Tested Companies for such Fiscal Quarter and the Fiscal Year to date, copies of which have been furnished to Administrative Agent and each Lender (i) were prepared in accordance with GAAP throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present the financial position of Holdings and the Tested Companies as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments, and (iii) show all material Debts and other liabilities, direct or contingent, of Holdings and the Tested Companies as of the date of such financial statements, including liabilities for taxes, material commitments and Debt.

(c) Interim Monthly Reports. The unaudited Consolidated balance sheet of the Tested Companies for the most recent Fiscal Month ended, and Fiscal Year to date, and the related Consolidated statements of income or operations, shareholders' equity and cash flows of the Tested Companies for such Fiscal Month and the Fiscal Year to date, copies of which have been furnished to Administrative Agent and each Lender (i) were prepared in accordance with GAAP throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present the financial position of the Tested Companies as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments, and (iii) show all material Debts and other liabilities, direct or contingent, of the Tested Companies as of the date of such financial statements, including liabilities for taxes, material commitments and Debt.

(d) Projections. The Consolidated Projections of the Tested Companies delivered pursuant to **Section 6.1(i)** were prepared in Good Faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, Borrowers' best estimate of their future financial position and performance.

7.12 **Accounts.** In determining which Accounts are Eligible Accounts, Administrative Agent may rely on all statements and representations made by Borrowers with respect thereto. Borrowers represent and warrant that, with respect to each Account (and, to the extent applicable, the Account Debtor related thereto) at the time it is included as an Eligible Account in a Borrowing Base Certificate, that:

- (a) such Account satisfies all of the requirements of an Eligible Account set forth in the definition of “Eligible Account”;
- (b) such Account is, in all respects, genuine, and enforceable in accordance with its terms except for such limits thereon arising from any applicable Debtor Relief Laws;
- (c) such Account arises out of a completed, *bona fide* sale and delivery of Goods or rendering of services in the Ordinary Course of Business, substantially in accordance with any purchase order, contract, or other document relating thereto;
- (d) such Account is for a sum certain shown on the invoice covering such sale or rendering of services (or a schedule thereto) and will mature as stated in such invoice;
- (e) a true and complete copy of the invoice relating to such Account has been furnished to Administrative Agent (but only to the extent Administrative Agent has requested a copy of such invoice);
- (f) such Account is absolutely owing by such Account Debtor, without contingency in any respect;
- (g) no extension, compromise, settlement, modification, credit, deduction, discount, allowance, or return has been authorized with respect to such Account, except discounts or allowances granted in the Ordinary Course of Business for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Administrative Agent hereunder;
- (h) such Account is not subject to any right of offset, Lien (other than Administrative Agent’s Lien), discount, charge back, deduction, defense, dispute, counterclaim, or other adverse condition except as arising in the Ordinary Course of Business and disclosed to Administrative Agent in writing;
- (i) no purchase order, agreement, document, or Applicable Law restricts assignment of such Account to Administrative Agent (regardless of whether, under the UCC, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;
- (j) to Borrowers’ knowledge, (i) there are no facts, events, or circumstances that are reasonably likely to impair the validity, enforceability, or collectibility of such Account or reduce the amount payable, or delay payment, thereunder; (ii) the related Account Debtor had the capacity to contract when such Account arose, continues to meet the applicable Borrower’s customary credit standards, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against such Account Debtor that would reasonably be expected to have a Material Adverse Effect on such Account Debtor’s financial position;

(k) there are no written or oral agreements or understandings between any Borrower and the related Account Debtor for the Account Debtor to make any payment on such Account in any manner inconsistent with the terms of this Agreement or the other Loan Documents; and

(l) none of the transactions giving rise to such Account violate any Applicable Law, all documentation relating thereto is legally sufficient under such Applicable Law, and all such documentation is legally enforceable in accordance with its terms except as enforceability may be limited by any Debtor Relief Law or by general principles of equity (whether such enforcement is considered in a proceeding at law or in equity).

7.13 **Taxes.** Except to the extent that a failure to do so would not, individually or in the aggregate, reasonably be expected to result in a liability to Holdings, the Credit Parties or any of their respective Subsidiaries exceeding \$100,000, each of Holdings, each Credit Party and each of their respective Subsidiaries has (a) filed all Federal, state, and local tax returns and other reports with respect to material Taxes that it is required by Applicable Law to file, and all such tax returns that have been filed with the applicable taxing authority or provided to Administrative Agent, LC Issuer or any Lender in connection with this Agreement are true, complete, and correct in all material respects and (b) has paid, or made provision for the payment of, all Taxes imposed, levied, or assessed upon it, its income, and its Properties that are due and payable (except to the extent such Taxes are being Properly Contested). Each Credit Party and each of its Subsidiaries has adequately provided in its books and records for all Taxes for all years not closed by applicable statutes and for its current Fiscal Year. No Credit Party or any of its Subsidiaries is subject to any Federal, state, or local tax Liens that are not Permitted Liens, and no Credit Party or any of its Subsidiaries has received any notice of deficiency or other official notice to pay any delinquent Taxes in an amount exceeding \$100,000 (except to the extent such Taxes are being Properly Contested). There is no proposed tax assessment against any Credit Party or any of its Subsidiaries that could, if made, reasonably be expected to have a Material Adverse Effect.

7.14 **Insurance.** The Properties of Holdings, the Credit Parties and their respective Subsidiaries are insured with financially sound and licensed insurance companies not Affiliates of such Persons, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar Properties in localities where the applicable Credit Party or the applicable Subsidiary operates, and otherwise in compliance in all respects with **Section 8.3**. The insurance coverage of the Credit Parties and their Subsidiaries as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on **Schedule 7.14**.

7.15 **Solvent; Fraudulent Transfer.** The Credit Parties and their Subsidiaries, taken as a whole, are Solvent and, after consummation of the transactions contemplated to occur under this Agreement and the other Loan Documents, will be Solvent. No transfer of Property is being made and no obligation is being incurred by Holdings, any Credit Party or any of their respective Subsidiaries in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Credit Party or any of its Subsidiaries.

7.16 **Litigation.** Except as otherwise may be set forth on **Schedule 7.16**, (i) there are no Commercial Tort Claims existing in favor of any Credit Party, and (ii) there are no Adverse Proceedings pending or, to any Credit Party's knowledge, threatened against any Credit Party or any of its Subsidiaries, or any of their respective businesses, operations, or Properties (including Mortgaged Properties) that (a) relate to this Agreement or any other Loan Document or transactions contemplated herein or therein or (b) would reasonably be expected to have a Material Adverse Effect. No Credit Party or any of its Subsidiaries is in default with respect to any order, injunction, or judgment of any Governmental Authority, excepting therefrom any that would not reasonably be expected to have a Material Adverse Effect.

7.17 **Material Contracts and Restrictive Agreements.** As of the Closing Date, no Credit Party or Subsidiary is a party or subject to any Material Contracts or Restrictive Agreement, except as may be set forth in **Schedule 7.17** or as is otherwise permitted pursuant to **Section 9.8**.

7.18 **Surety Obligations.** Except to the extent expressly permitted herein or in the other Loan Documents, none of Holdings, any Credit Party or any of their respective Subsidiaries has any actual or contingent liability in its capacity as a surety or indemnitor under any bond or other contract that assures any other Person's payment or performance of any obligation.

7.19 **Governmental Approvals.** Holdings, each Credit Party and each of their respective Subsidiaries has, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease, and operate its businesses and Properties, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Holdings, Credit Parties and their respective Subsidiaries have obtained all import, export, or other licenses, permits, or certificates necessary to the import or handling of their Goods and other Collateral, and such licenses, permits, and certificates are in full force and effect, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Holdings, Credit Parties and their respective Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of their Goods and other Collateral, except where noncompliance would not reasonably be expected to have a Material Adverse Effect.

7.20 **Brokers.** Except as set forth on **Schedule 7.20**, no brokerage commissions, finder's fees, investment banking fees, or similar fees, commissions, or charges are payable or will become payable under any circumstances in connection with any transactions contemplated by this Agreement or the other Loan Documents, excepting therefrom any payable to Administrative Agent, LC Issuer, any Lender or any Affiliate thereof.

7.21 **Compliance with Laws.** Holdings, each Credit Party and their respective Subsidiaries are in compliance with (a) all Anti-Terrorism Laws and all Anti-Corruption Laws; and (b) except such non-compliance with such other Applicable Law that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, all other Applicable Law not described in clause (a) above. Holdings, each Credit Party and each of their respective Subsidiaries has complied, and its Properties and business operations are in compliance, with all Applicable Law, except where any failure to so comply would reasonably be expected to have a Material Adverse Effect. No Governmental Authority has issued or, to the Credit Parties' knowledge, threatened to issue to Holdings, any Credit Party or any of their respective Subsidiaries any citation, notice, or order asserting or alleging any material non-compliance with, or material violation of, any Applicable Law.

7.22 **ERISA.** None of Holdings, any Credit Party or any of their respective Subsidiaries is party to any Plan existing as of the Closing Date, except as may be set forth on **Schedule 7.22**, and as to each such Plan (if any) in existence on the Closing Date and set forth on **Schedule 7.22**, except as set forth on **Schedule 7.22**:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal and state laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of Credit Parties, nothing has occurred that would prevent, or cause the loss of, such qualification. Each Borrower and ERISA Affiliate has made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of Credit Parties, threatened claims, actions, or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted in or would reasonably be expected to have a Material Adverse Effect.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) no credit Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) no Credit Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred that, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) no Credit Party or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(d) Except as would not reasonably be expected to have a Material Adverse Effect, no ERISA Event or event described in Section 4062(e) of ERISA has occurred and is continuing with respect to any Plan.

(e) No Plan or trust created thereunder, or party in interest (as defined in Section 3(14) of ERISA, or any fiduciary (as defined in Section 3(21) of ERISA), has engaged in a "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) that would subject any Credit Party to any material penalty or tax on "prohibited transactions" imposed by Section 502 of ERISA or Section 4975 of the Code.

(f) With respect to any Foreign Plan (i) all material employer and employee contributions required by law or by the terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance, or the book reserve established for any Foreign Plan, together with any accrued contributions, is not insufficient by a material amount to procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities, except to the extent that the failure to do so would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(g) No Credit Party, nor any of its Subsidiaries, is (and will not be) a Plan.

7.23 Environmental Matters. Except as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect:

(a) Each Credit Party and Subsidiary is, and has been for the last two (2) years, in full compliance with all applicable Environmental Laws, including compliance with all permits or other authorizations issued to them by Governmental Authorities under Environmental Laws ("Permits"). Each Credit Party and Subsidiary has filed timely and complete renewal or new applications for all required Permits as needed to ensure the continued applicability of such permits and there is no proceeding pending that might directly and adversely affect the validity of any current or proposed Permit.

(b) No Environmental Release has occurred as a result of any Credit Party's or any Subsidiary's past or present operations, and no Credit Party's nor any Subsidiary's past or present operations, Real Estate, or other Properties are the subject of any investigation by or at the behest of any Governmental Authority to determine whether any remedial action is needed to be taken by any Credit Party or any Subsidiary to address any Hazardous Materials. No Credit Party nor any Subsidiary has any liability, contingent or otherwise, with respect to any Environmental Release or any Hazardous Materials with respect to any Real Estate now or previously owned or operated by it or with respect to any other Real Estate at which any Credit Party or Subsidiary may otherwise be liable for Environmental Releases or Hazardous Materials. No Credit Party or Subsidiary has generated, managed, stored, or disposed of any Hazardous Materials in or on any portion of its Real Estate or transferred any Hazardous Materials to or from any such Property to or from any other location, in any event, in violation of Environmental Laws.

(c) No Credit Party or Subsidiary has given or received any Environmental Notice that remains unresolved.

(d) No Real Estate subject to a Mortgage is subject to any Lien imposed by or arising under Environmental Law, and there is no proceeding pending or, to any Credit Party's or Subsidiary's knowledge, threatened for imposition of such Lien.

(e) No Credit Party or Subsidiary, and no Real Estate, is the subject of any outstanding order, consent decree or settlement agreement relating to any Environmental Law, Permit or Environmental Release.

7.24 **Regulated Entity** .

(a) Investment Company Act. None of Holdings, any Credit Party or any of their respective Subsidiaries is subject to regulation under the Investment Company Act of 1940. None of Holdings, any Credit Party or any of their respective Subsidiaries is an "investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company", as such terms are defined in the Investment Company Act of 1940.

(b) Enemy Act. None of Holdings, any Credit Party or any of their respective Subsidiaries is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq.*), as amended. To its knowledge, None of Holdings, any Credit Party or any of their respective Subsidiaries is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or, to the extent applicable, (c) the PATRIOT Act. None of Holdings, any Credit Party or any of their respective Subsidiaries (i) is a Sanctioned Person or (ii) to its knowledge, engages in any dealings or transactions, or is otherwise associated, with any Sanctioned Person in violation of applicable Sanctions or Anti-Terrorism Laws.

(c) OFAC. Each of Holdings, each Credit Party and each of their respective Subsidiaries, and, to their knowledge, their respective directors, officers, and employees, are in compliance with applicable Sanctions and are not engaged in any activity that could reasonably be expected to result in any Credit Party or Subsidiary being designated as a Sanctioned Person. None of Holdings, any Credit Party, any of their respective Subsidiaries or any of their respective Affiliates acting in connection with the Loans is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://www.ustreas.gov/offices/enforcement/ofac/> or as otherwise published from time to time.

(d) Sanctions. None of Holdings, any Credit Party or any of their respective Subsidiaries or, to the knowledge of each Credit Party or its Subsidiaries, any of their respective directors, officers, employees or Affiliates acting in connection with the Loans (i) is a Sanctioned Person, (ii) has any of its assets located in a Sanctioned Country, except to the extent permitted by OFAC or other relevant Sanctions authority, or (iii) derives any of its operating income from investments in, or transactions with Sanctioned Persons in violation of applicable Sanctions or Anti-Terrorism Laws. The proceeds of any Loan, Letter of Credit, credit extension or other transaction contemplated by this Agreement or any other Loan Document have not been used (x) in violation of applicable Sanctions or Anti-Terrorism Laws, (y) to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country in violation of applicable Sanctions or Anti-Terrorism Laws or (z) in any other manner that results in a violation of Sanctions by any Person participating in the Loans (including Administrative Agent, the LC Issuer, the Lenders or any other Person making, issuing or participating in such Loans, Letters of Credit, other credit extensions or other transactions whether as an underwriter, advisor, investor or otherwise).

(e) Anti-Corruption Laws. Holdings, each of the Credit Parties and each of their respective Subsidiaries and, to the knowledge of Holdings, each Credit Party and each of their respective Subsidiaries, each of their respective directors, officers, employees and Affiliates acting in connection with the Loans, is in compliance with Anti-Corruption Laws. None of Holdings, the Credit Parties or their respective Subsidiaries is making a payment, offering, or promise to pay, or authorizing the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Credit Party or any of its Subsidiaries or to any other Person, in violation of any Anti-Corruption Law. No part of the proceeds of any Loans, Letters of Credit, other credit extension or other transaction contemplated by this Agreement or any other Loan Document will violate any receipt or use restrictions in any Anti-Corruption Laws.

(f) PATRIOT Act. To the extent applicable, Holdings, each Credit Party and each of their respective Subsidiaries is in compliance with the PATRIOT Act. Without limitation of the foregoing, all information set forth in each Beneficial Ownership Certification is true and correct in all respects as of the date hereof and will be true and correct as of the date of each Loan made and each Letter of Credit issued pursuant hereto, except only as to which Administrative Agent has received notice pursuant to **Section 8.6(n)(iv)(H)**.

(g) Margin Stock. None of Holdings, any Credit Party or any of their respective Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock; no part of the proceeds of any credit extension made to such Credit Party will be used (i) to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System as in effect from time to time or (ii) to finance or refinance any (A) commercial paper issued by such Credit Party or (B) any other Debt, except for Debt that such Credit Party incurred for general corporate or working capital purposes, if and to the extent that the financing (and refinancing) thereof are expressly permitted herein.

(h) EEA. Neither Holdings nor any Credit Party is an Affected Financial Institution.

7.25 Labor Relations and Related Matters. Except as set forth on **Schedule 7.25**:

(a) Collective Bargaining Agreement. As of the Closing Date, none of Holdings, any Credit Party or any of their respective Subsidiaries is party to or bound by any collective bargaining agreement. None of Holdings, any Credit Party or any of their respective Subsidiaries is engaged in any unfair labor practice that would reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against Holdings, any Credit Party or any of their respective Subsidiaries, or to the knowledge of each Credit Party, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Holdings, any Credit Party or any of their respective Subsidiaries or to the knowledge of each Credit Party, threatened against any of them, (b) no strike or work stoppage in existence or to the knowledge of each Credit Party, threatened that involves Holdings, any Credit Party or any of their respective Subsidiaries, and (c) to the knowledge of each Credit Party, no union representation question existing with respect to the employees of Holdings, any Credit Party or any of their respective Subsidiaries and, to the knowledge of each Credit Party, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as would not reasonably be expected to have a Material Adverse Effect.

(b) Fair Labor. No Goods have been or will be produced, and no services have been or will be rendered, by Holdings, any Credit Party or any of their respective Subsidiaries in violation of any applicable labor laws or regulations (including any minimum wage or wage-and-hour laws and regulations), any collective bargaining or other labor agreement, or any other similar laws, regulations, or agreements, in each case, which violation would reasonably be expected to have a Material Adverse Effect.

(c) WARN Act. As of the Closing Date, none of Holdings, any Credit Party or any of their respective Subsidiaries has, within the two (2) year period preceding the date of this Agreement, taken any action that would have constituted or resulted in a “plant closing” or “mass layoff” within the meaning of the Federal Worker Adjustment and Retraining Notification Act of 1988 or any similar applicable Federal, state, or local law or regulation, and no Credit Party has any reasonable expectation that any such action is or will be required at any time before the Stated Revolving Commitment Termination Date.

7.26 Relations with Vendors and Customers. There exists no actual or threatened termination, limitation, or modification of any business relationship between Holdings, any Credit Party or any of their respective Subsidiaries and any customer or supplier, or any group of customers or suppliers, that would reasonably be expected to have a Material Adverse Effect.

7.27 Use of Proceeds. The Credit Parties will use the proceeds of any initial Loan or Letter of Credit only: (a) for general corporate and working capital purposes, (b) to refinance simultaneously with the closing of this Agreement certain existing Debt that such Credit Party incurred for working capital or general corporate purposes; (c) to pay transaction fees, costs and expenses related to the credit facilities with Lenders established pursuant to this Agreement and the other Loan Documents; (d) to fund Capital Expenditures and Permitted Acquisitions; and (e) to pay other Obligations from time to time subsequent to the Closing Date in accordance with the terms of this Agreement; in each case not in contravention of Applicable Law, this Agreement (including particularly, but without limitation, **Section 8.1**) or any Loan Document.

7.28 **Accuracy and Completeness of Information.** None of the written information furnished to the Lenders by or on behalf of Holdings, any Credit Party or any of their respective Subsidiaries for use in connection with the transactions contemplated hereby (other than projections and pro forma financial information contained in such materials) contains any untrue statement of a material fact or omits to state a material fact (known to any Credit Party, in the case of any document not furnished by any of them) necessary in order to make the statements contained herein or therein not misleading in any material manner in light of the circumstances in which the same were made when taken as a whole. All projections and pro forma financial information contained in such materials are based upon Good Faith estimates and assumptions believed by the Credit Parties to be reasonable at the time made, it being recognized by Administrative Agent and the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results and that such differences may be material. There are no facts known to any Credit Party (other than matters of a general economic nature) that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such written information furnished to the Lenders or disclosed in publicly available reports filed with the SEC.

7.29 **No Defaults.** No Default or Event of Default exists. Except as would not reasonably be expected to have a Material Adverse Effect, (a) no Credit Party nor any of its Subsidiaries is in default, and no event or circumstance has occurred or exists that with the passage of time or giving of notice would constitute a default, under any Material Contract and (b) no facts or circumstances exist that would permit any party to a Material Contract (other than a Credit Party or its Subsidiary) to terminate such Material Contract before its scheduled termination date. No event or circumstance that, taken alone or in conjunction with other events or circumstances has had, or would reasonably be expected to have, a Material Adverse Effect has occurred since the date of the audited financial statements of the Tested Companies described in the Historical Financial Statements.

7.30 **Senior Debt.** The obligations of each Credit Party under this Agreement and any other Loan Documents to which it is party do rank and will rank at least *pari passu* in priority of payment with all other Debt of such Credit Party except Debt of such Credit Party to the extent secured by Permitted Liens entitled to priority over Administrative Agent's Liens. Without limitation of the foregoing, the Obligations do and will constitute "Senior Debt" (or the equivalent thereof) under the documentation governing any Subordinated Debt permitted to be incurred hereunder.

SECTION 8

AFFIRMATIVE COVENANTS AND CONTINUING AGREEMENTS

Until Payment in Full of the Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Bank Product Obligations (other than Excluded Bank Product Obligations) that have been Cash Collateralized) and termination of the Commitments, each Credit Party shall, and shall cause each Subsidiary, as applicable, to:

8.1 **Use of Proceeds** . Use the proceeds of the Loans and any Letters of Credit only (a) for Borrowers' working capital and general corporate (or company) purposes to the extent permitted by this Agreement; (b) to refinance simultaneously with the closing of the credit facility(ies) evidenced herein certain Debt of Borrowers existing as of the Closing Date that Borrowers incurred for working capital or general corporate (or company) purposes; (c) to pay fees and transaction expenses associated with the closing of the credit facility(ies) evidenced herein; (d) to fund Capital Expenditures and Permitted Acquisitions; and (e) to pay other Obligations from time to time subsequent to the Closing Date in accordance with the terms of this Agreement. Without limitation of the foregoing, no portion of the proceeds of any Loan or Letter of Credit shall be used (i) to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for the purpose of reducing or retiring any Debt that was originally incurred to purchase or carry any Margin Stock or for any other purpose that might constitute a "purpose credit" under Regulation U, or in any manner or for any other purpose that causes or might cause a violation of, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System as in effect from time to time or any other regulation thereof, or violation of the Exchange Act, (ii) to finance (or refinance) any commercial paper, including, without limitation, any issued by a Credit Party, or any other Debt, except for Debt that such Credit Party incurred for working capital or general corporate (or company) purposes, if and to the extent that the financing (and refinancing) thereof are expressly permitted herein, (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 Anti-Corruption Laws, or (iv) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or, in any event, in violation of any applicable Sanctions.

8.2 **Maintenance of Existence and Rights; Conduct of Business** .

(a) **Legal Existence**. Except as expressly permitted by **Section 9.7**, preserve and maintain its legal existence, authorities to transact business, rights, franchises, governmental licenses, and privileges in its jurisdiction of incorporation or organization; and

(b) **Qualification**. Qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its Properties or the nature of its business requires such qualification or authorization, except where the failure to so qualify or maintain such qualification and authorization would not reasonably be expected to have a Material Adverse Effect.

8.3 **Insurance** .

(a) **Maintenance**. Maintain insurance with financially sound and reputable insurance companies with an A.M. Best rating of at least "A+," (unless otherwise approved by Administrative Agent) and otherwise satisfactory to Administrative Agent (a) with respect to the Properties and business of Credit Parties and their Subsidiaries, of such types (including public liability, Property insurance, comprehensive general liability, product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance), in such amounts, and with such coverages and deductibles as may be required by Applicable Law and as may be customary for companies similarly situated; (b) with respect to Collateral (wherever located, in storage or in transit in vehicles, vessels, or aircraft, including Goods evidenced by Documents, and without limiting the requirements of clause (a) above), covering casualty, hazard, theft, malicious mischief, flood, and other risks, from such insurers, in such amounts, with such coverages and deductibles, and with such endorsements (including for casualty insurance, evidence that Administrative Agent is named as "lender loss payee" thereon, and, in the case of liability insurance, evidence that Administrative Agent is named as an "additional insured" thereon) , in each case, in a form and manner satisfactory to Administrative Agent in its Permitted Discretion; and (c) business interruption insurance in an amount satisfactory to Administrative Agent, with deductibles and with endorsements, in each case, satisfactory to Administrative Agent in its Permitted Discretion. Without limitation of the foregoing, if and to the extent that at any time any Real Estate constitutes Collateral, Administrative Agent first shall have requested and received executed flood hazard determinations and a flood zone certification (together with notice to Borrower Representative regarding such flood zone certification), and to the extent that any such Real estate is determined to be located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards and that participates in the National Flood Insurance Program, Borrowers shall have provided Administrative Agent with evidence of flood insurance thereon, with such insurer, in such amount, with such coverages and deductibles, and with such endorsements (including evidence that Administrative Agent is named as "lender loss payee" or, if applicable, "mortgagee" thereon), together with such other documentation and coverages, each in compliance with the FDPA, all of which shall be satisfactory in form and substance to Administrative Agent in its Permitted Discretion (and for avoidance of any doubt, no Mortgage shall be executed, delivered or recorded in regard to such Real Estate unless and until the foregoing has been completed).

(b) Summaries. At the reasonable request of Administrative Agent, but no more frequently than on an annual basis unless an Event of Default has occurred and is continuing, furnish to Administrative Agent summaries of all insurance policies (and, if requested by Administrative Agent from time to time, true and complete copies thereof) and evidence of insurance in the form of (i) the endorsements required under clause (c) below and (ii) an Acord Form 27 with respect to casualty and Property insurance and an Acord Form 25 with respect to liability insurance and (iii) such other forms as Administrative Agent may request.

(c) Receipts. Unless Administrative Agent shall agree otherwise, to the extent applicable, each policy shall include endorsements satisfactory to Administrative Agent in its Permitted Discretion (i) showing Administrative Agent as a "lender loss payee" as its interests may appear with respect to Property and casualty insurance and "additional insured" with respect to liability insurance; (ii) requiring (30) days prior written notice to Administrative Agent in the event of cancellation of the policy for any reason whatsoever; and (iii) specifying that the interest of Administrative Agent shall not be impaired or invalidated by any act or neglect of any Person, nor by the occupation of the premises for purposes more hazardous than are permitted by the insurance policy. If Credit Parties fail to provide and pay for any insurance, Administrative Agent may, at its option, but shall not be obligated to do so, procure the insurance and charge Credit Parties therefor. Each Credit Party agrees to deliver to Administrative Agent, promptly as received (but, in any event, within five (5) Business Days after receipt thereof), copies of all claims made to insurance companies. While no Default or Event of Default exists, Credit Parties may settle, adjust, or compromise any insurance claim so long as the Net Proceeds (Loss) are delivered to Administrative Agent for application to the Obligations, as and to the extent required by this Agreement and provided for in the Term Loan Intercreditor Agreement. If a Default or Event of Default exists, only Administrative Agent shall be authorized to settle, adjust, and compromise such claims unless and except to the extent otherwise approved by Administrative Agent in its discretion from time to time.

(d) Flood Insurance. With respect to each Mortgaged Property, (i) obtain flood insurance in such total amount as Administrative Agent or the Required Lenders may from time to time reasonably require and in any event no less than the amount required by Flood Insurance Laws, if at any time the area in which any improvements located on any Mortgaged Property is designated a "flood hazard area" in any flood insurance rate map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the Flood Insurance Laws, (ii) deliver to Administrative Agent evidence of such compliance in form and substance reasonably acceptable to Administrative Agent including, without limitation, a copy of the flood insurance policy and a declaration page relating to the insurance policies required by this Section 8.3(d) which shall (a) identify the addresses of each property located in a special flood hazard area, (b) indicate the applicable flood zone designation, the flood insurance coverage and the deductible relating thereto and (c) provide that the insurer will give Administrative Agent 45 days written notice of cancellation or non-renewal and shall include evidence of annual renewals of such insurance and (iii) shall be otherwise in form and substance satisfactory to Administrative Agent.

8.4 Inspections; Appraisals .

(a) Inspections; Appraisals. Permit Administrative Agent and its agents from time to time, subject to advance notice and during normal business hours (except when any Event of Default exists), to visit, inspect, and appraise the Properties of any Credit Party or Subsidiary, inspect, audit, and make extracts from any Credit Party's or Subsidiary's books and records and discuss with such Person's officers, employees, agents, advisors, and independent accountants (provided, that an officer or other representative of the applicable Credit Party or Subsidiary shall be permitted to be present for any discussions with the independent accountants) such Person's business, financial position, assets, prospects, and results of operations; provided, that no Credit Party or their respective Subsidiaries will, pursuant to this **Section 8.4, Section 8.6(a)(vi)** or any other provision of this Agreement or any other Loan Document, be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure to Administrative Agent, any agent thereof or any Lender is prohibited by applicable law or any binding agreement, (ii) except to the extent reasonably necessary in order to realize upon any of the Collateral as part of an exercise of remedies under this Agreement or the other Loan Documents, information constituting material trade secrets to the extent not materially relevant to the credit analysis of Credit Parties and their respective Subsidiaries and to the extent the disclosure of such trade secrets would be materially harmful to the business of any Credit Party or any of its Subsidiaries, or (iii) that is subject to attorney-client privilege (or similar legally-recognized privilege that would be lost by virtue of such disclosure to Administrative Agent, any agent thereof and the Lenders) or constitutes attorney work product. Lenders may participate in any such visit or inspection at their own expense. Neither Administrative Agent nor any Lender shall have any duty to any Credit Party or Subsidiary to make any inspection, appraisal or report nor to share any results of any inspection, appraisal, or report with any Credit Party or Subsidiary. Credit Parties acknowledge that all inspections, appraisals and reports are prepared by Administrative Agent and Lenders for their own purposes, and no Credit Party or Subsidiary shall be entitled to receive them or rely upon them.

(b) Reimbursements. Reimburse Administrative Agent for all reasonable and documented out-of-pocket charges, costs and expenses of Administrative Agent and its agents in connection with (i) field examinations of any Credit Party's or Subsidiary's books and records or any other financial or Collateral matters as Administrative Agent deems appropriate, up to two (2) times per Loan Year (increasing to three (3) times per Loan Year if during such Loan Year Excess Availability is less than 17.5% of the Revolving Commitments for any five (5) consecutive Business Days) and (ii) appraisals of Inventory each up to two (2) times per Loan Year; provided, however, that if an examination or appraisal is initiated during the existence of an Event of Default, all charges, costs, and expenses therefor shall be reimbursed by Borrowers without regard to such limits. Subject to and without limiting the foregoing, Borrowers specifically agree to pay the standard charges of Administrative Agent's internal field examination group (including Administrative Agent's then standard per-person charges for each day that an employee or agent of Administrative Agent or its Affiliates is engaged in any field examination activities). This **Section 8.4** shall not be construed to limit Administrative Agent's right to conduct field examinations or obtain appraisals, at its own expense, at any time and from time to time in its discretion or use third parties for such purposes.

8.5 Adequate Books and Records. Keep adequate records and books of account with respect to its business activities, in which proper entries are made in all material respects in accordance with GAAP reflecting all financial transactions.

8.6 **Borrowing Base Reporting; Financial and Other Information** . Comply with the following:

(a) **Borrowing Base Certificate; Collateral Reports** Borrower Representative shall deliver a fully completed and executed Borrowing Base Certificate to Administrative Agent no later than the twentieth (20th) day of each Fiscal Month (and on or before Tuesday of each week during a Cash Dominion Period), beginning with the first Fiscal Month ending immediately after the Closing Date, prepared as of the end of the immediately preceding Fiscal Month. Borrower Representative shall attach the following to each Borrowing Base Certificate (if Borrowing Base Certificates are then required to be delivered on a monthly basis) or each Borrowing Base Certificate specified from time to time by Administrative Agent (if Borrowing Base Certificates are then required to be delivered on a basis more frequently than monthly), each of which shall be in form and substance satisfactory to Administrative Agent and certified by Borrower Representative's Responsible Officer to be complete and accurate and in compliance with the terms of this Agreement and the other Loan Documents:

(i) **Accounts Receivable Reports**. A report (in form and substance satisfactory to Administrative Agent) listing (A) all of Borrowers' Accounts and Eligible Accounts as of the last Business Day of the applicable reporting period; (B) the amount, age, invoice date and due date of each Account on an original invoice and due date aging basis and showing all discounts, allowances, credits, authorized returns, and disputes; (C) the name and mailing address of each Account Debtor; (D) if requested by Administrative Agent from time to time, copies of all or a portion of the documents underlying or relating to Borrowers' Accounts; and (E) such other information regarding Borrowers' Accounts that Administrative Agent may request from time to time (each, an "**Accounts Receivable Report**");

(ii) **Inventory Reports**. A report (in form and substance satisfactory to Administrative Agent) listing (A) all of Borrowers' Inventory and all Eligible Inventory as of the last Business Day of the applicable reporting period; (B) the type, cost, and location of all such Inventory; (C) all of such Inventory that constitutes raw materials, work-in-process, and finished Goods or returned or repossessed Goods; (D) all Inventory that has not been timely sold in the Ordinary Course of Business; (E) all Inventory that is not located at Property owned or leased by a Borrower or that is in possession of any Person other than a Borrower; and (F) such other information regarding Borrowers' Inventory as Administrative Agent may request from time to time (each, an "Inventory Report");

(iii) **Accounts Payable Reports**. A report (in form and substance satisfactory to Administrative Agent) listing (A) each Credit Party's accounts payable; (B) the number of days that have elapsed since the original date of invoice of each such account payable; (C) the name and address of each Person to whom such account payable is owed; and (D) such other information concerning Borrowers' accounts payable as Administrative Agent may request from time to time (each, an "**Accounts Payable Report**");

(iv) **[Reserved]**;

(v) **Consigned Inventory Reports**. A report (in form and substance satisfactory to Administrative Agent) listing (A) each Person who, in its capacity as Consignee under a Consignment, is in possession of any Borrower's Inventory; (B) the book value of such Inventory held by such Person under such Consignment and (C) such other information concerning such Consignment as Administrative Agent may request from time to time.

(v i) Other Reports. Such other reports and information in connection with any Collateral or any Credit Party's or any of its Subsidiaries' respective businesses, operations, Properties, prospects, or condition (financial or otherwise), each to be prepared with respect to such periods and with respect to such information and reporting as Administrative Agent may reasonably request from time to time, and each of which to be in form and substance reasonably satisfactory to Administrative Agent.

Unless otherwise agreed to by Administrative Agent, the items to be provided under this **Section 8.6(a)** shall be delivered to Administrative Agent by the specific method of Approved Electronic Communication designated by Administrative Agent.

(b) Interim Quarterly Statements. No later than forty-five (45) days after the end of each Fiscal Quarter, beginning with the first Fiscal Quarter ending June 30, 2023, Borrower Representative shall deliver to Administrative Agent (i) an unaudited Consolidated balance sheet of the Tested Companies at the end of such period and a Consolidated income statement or operations and statement of cash flows and statement of stockholders' equity (deficit) of the Tested Companies for such period (and for the portion of the Fiscal Year ending with such period), together with all supporting schedules, fairly presenting in all material respects the Consolidated financial position and the results of the operations of the Tested Companies as of the end of and through such period (and for the portion of the Fiscal Year ending with such period), in each case setting forth in comparative form the figures for the corresponding period or periods of the preceding Fiscal Year and (ii) upon Administrative Agent's request, a report reconciling (A) Borrowers' Accounts and Inventory as set forth in the Accounts Receivable Report and the Inventory Report attached to the Borrowing Base Certificate delivered to Administrative Agent that is as of the same date to (B) Borrowers' aggregate Accounts and Inventory set forth in the financial statements delivered pursuant to this **Section 8.6(b)**.

(c) Interim Monthly Statements. No later than thirty (30) days after the end of each Fiscal Month, beginning with the first Fiscal Month ending immediately after the Closing Date, Borrower Representative shall deliver to Administrative Agent (i) an unaudited Consolidated balance sheet of the Tested Companies at the end of such period and a Consolidated income statement and statement of cash flows and statement of shareholder's equity of the Tested Companies for such period (and for the portion of the Fiscal Year ending with such period), together with all supporting schedules, fairly presenting in all material respects the Consolidated financial position and the results of the operations of the Tested Companies as of the end of and through such period (and for the portion of the Fiscal Year ending with such period), in each case setting forth in comparative form the figures for the corresponding period or periods of the preceding Fiscal Year, (ii) a report (in form and substance satisfactory to Administrative Agent) setting forth all amounts owed to (A) third party processors or other Persons (other than a Borrower) in possession of Inventory and (B) any Person that is instrumental to the liquidation analysis set forth in the most recent Qualified Appraisal of Inventory and (iii) upon Administrative Agent's request, a report reconciling (A) the Accounts and Inventory of Borrowers as set forth in the Accounts Receivable Report and the Inventory Report attached to the Borrowing Base Certificate delivered to Administrative Agent that is as of the same date to (B) Borrowers' aggregate Accounts and Inventory set forth in the financial statements delivered pursuant to this **Section 8.6(c)**.

(d) Annual Statements. No later than ninety (90) days after the end of each Fiscal Year, beginning with the first Fiscal Year ending immediately after the Closing Date, Borrower Representative shall deliver to Administrative Agent a detailed audited financial report of the Tested Companies containing a Consolidated balance sheet at the end of such period and a Consolidated income statement or operations, statement of cash flows, and statement of stockholders' equity (deficit) for such period, together with all supporting schedules and footnotes, and a report containing management's discussion and analysis of such financial statements for the Fiscal Year then ended, including the accompanying notes thereto, fairly presenting in all material respects the Consolidated financial position and the results of the operations of the Tested Companies as of the end of and for such Fiscal Year, in each case, setting forth in comparative form the figures for the corresponding period or periods of the preceding Fiscal Year, together with an unqualified audit opinion (but such opinion may contain a "going concern" or like qualifications that is due solely to (i) the impending maturity of any Debt permitted by this Agreement, (ii) any anticipated inability to satisfy the Financial Covenants in **Section 10.1** or any financial covenant set forth in **Section 7.03** of the Term Loan Credit Agreement (in each case, only so long as Borrowers would have the ability to exercise a cure right under Section 11.7 of this Agreement and Section 9.02 (or any analogous provision) of the Term Loan Credit Agreement), and/or (iii) changes in accounting principles or practices reflecting changes in GAAP that are required or approved by Borrowers' independent certified public accountants) of independent certified public accountants of nationally recognized standing selected by Borrower Representative that the financial statements were prepared in accordance with GAAP and present fairly, in accordance with GAAP, in all material respects the results of operations and financial position of the Tested Companies as of the end of and for the Fiscal Year then ended.

(e) Compliance and No Default Certificate. Together with the reports and statements required by **Sections 8.6(b), (c) and (d)**, Borrower Representative shall deliver a Compliance Certificate signed by a Responsible Officer of Borrower Representative (a) stating that such statements and reports are true and correct and fairly present, in all material respects, the Consolidated financial position and results of operations of the Tested Companies for the period presented and that such statements were prepared in accordance with GAAP (except, with respect to statements delivered for any Fiscal Month or Fiscal Quarter, the absence of footnotes and subject to normal year-end adjustments); (b) stating that no Default or Event of Default then exists or, if a Default or Event of Default exists, the nature and duration thereof and Credit Parties' intention with respect thereto; (c) to which will be attached or accompanied by a spreadsheet showing calculations of all Financial Covenants, that must be of such detail as requested by Administrative Agent from time to time; and (d) solely in connection with the reports and statements required by (i) **Section 8.6(b)**, setting forth a list of all Acquisitions, Investments made or existing in reliance on **Section 9.4(d), (e), (f), (k), (p), (q), (s) or (t)**, Restricted Payments made in reliance on **Section 9.3(d), (e), (f), (g) or (i)**, payments on Funded Debt made in reliance on **Section 9.6(f), (g) or (h)**, payments on Subordinated Debt, the incurrence of Funded Debt other than the Obligations and Term Loan Debt, and Asset Dispositions made in reliance on clause (j) or (m) of the definition of "Permitted Asset Dispositions" and (ii) **Section 8.6(b) and Section 8.6(d)**, setting forth a list of all Restricted Payments made pursuant to **Section 9.3(f) or (g)**, in each case of clauses (i) and (ii), during the period covered by the financial statements with which the Compliance Certificate is delivered, together with the total amount for each of the foregoing categories, that must be of such detail as requested by Administrative Agent from time to time.

(f) Access to Accountants. Simultaneously with retaining (or retained on their behalf) accountants for their annual audit or at any time thereafter, if requested to do by Administrative Agent, Borrower Representative shall send a letter to the aforementioned accountants, with a copy to Administrative Agent, LC Issuer and the Lenders, notifying such accountants that one of the primary purposes for retaining their services and obtaining audited financial statements is for use by Administrative Agent, LC Issuer, and the Lenders. Administrative Agent is authorized to send such notice if Borrower Representative fails to do so for any reason. Each Credit Party hereby authorizes Administrative Agent to communicate directly with such Credit Party's and its Subsidiaries' (or Holdings') independent public accountants (provided, that an officer or other representative of the applicable Credit Party or Subsidiary shall be permitted to be present for any discussions with the independent public accountants) and authorizes those accountants to disclose to Administrative Agent any and all financial statements and other supporting financial data, including matters relating to the annual audit and copies of any management letter with respect to its business, financial position, and other affairs.

(g) Auditor's Management Letters. Promptly upon receipt thereof (but, in any event, within five (5) Business Days after receipt) (and with respect to Holdings, receipt by it), Borrower Representative shall deliver to Administrative Agent copies of each report submitted to Holdings, any Credit Party or Borrower Representative by independent public accountants in connection with any annual, interim or special audit made by them of such Credit Party's books including each report submitted to such Credit Party concerning its accounting practices and systems and any final comment letter submitted by such accountants to management in connection with its annual audit.

(h) Term Loan Notices. Concurrently with delivery thereof under the Term Loan Debt Documents, copies of any reports or notices (including any compliance certificates thereunder, but excluding any Notice of Borrowing (as defined in the Term Loan Credit Agreement)) delivered to Term Loan Agent or the Term Loan Lenders pursuant to the Term Loan Debt Documents, to the extent not otherwise required to be delivered hereunder.

(i) Projections. Within thirty (30) days after the commencement of each Fiscal Year, beginning with the first Fiscal Year beginning immediately after the Closing Date, Borrower Representative shall deliver to Administrative Agent, LC Issuer and the Lenders Projections for such Fiscal Year, prepared on a month-by-month basis. Such Projections shall represent Borrower Representative's reasonable estimate of the future financial performance of the Tested Companies for the periods set forth therein and shall have been prepared on the basis of assumptions that Borrower Representative believes are fair and reasonable as of the date of preparation in light of current and reasonably foreseeable business conditions (it being understood that actual results may differ from those set forth in such Projections). Borrower Representative shall provide Administrative Agent, LC Issuer and the Lenders an update to such Projections upon Administrative Agent's request from time to time.

(j) Customer List. Upon Administrative Agent's request, Borrowers shall provide Administrative Agent with a listing of all of Borrowers and the Subsidiaries' customers' names and addresses as of the end of the immediately preceding Fiscal Year or as of such other date requested by Administrative Agent.

(k) Supplements to Schedules. Together with the financial statements required to be delivered pursuant to **Section 8.6(b)**, Borrower Representative shall supplement the Schedules (i) annexed hereto with respect to any matter hereafter arising that, if existing or occurring at the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation that has been rendered inaccurate thereby and (ii) in a previously delivered Collateral Disclosure Certificate that is necessary to correct any information in such Schedule, and, in each case of clause (i) and (ii), such Schedule shall be appropriately marked to show the changes made therein; provided that (A) such supplement to any Schedule or representation or warranty shall not be deemed to amend, supplement or otherwise modify such Schedule or representation or warranty, or be deemed a waiver of any Default or Event of Default resulting from the matters disclosed therein, except as consented to by Administrative Agent and the Required Lenders or all Lenders, as applicable in accordance with **Section 15.2** and (B) no supplement to any Schedule shall be required or permitted with respect to representations and warranties that relate solely to the Closing Date.

(l) [Reserved].

(m) Public Filings. Promptly after the sending or filing thereof (but, in any event, within five (5) Business Days thereafter) Credit Parties shall deliver to Administrative Agent (i) copies of any proxy statements, financial statements, regular, periodic, and special reports or registration statements or prospectuses that Holdings, any Borrower or Subsidiary files with the SEC (including any Form 10-Q Quarterly Reports, any Form 10-K Annual Reports, and Form 8-K Current Reports) or with any other Governmental Authority or any national or foreign securities exchange or the National Association of Securities Dealers, Inc.; and (ii) copies of any press releases or other statements made available by any Credit Party or any of its Subsidiaries to the public concerning material changes to or developments in the business of such Credit Party or such Subsidiary. Notwithstanding anything set forth in **Section 8.6**, the obligations referred to in this **Section 8.6(m)**, and **Sections 8.6(b)**, **8.6(c)** and **8.6(d)** may be satisfied with respect to financial information of the Tested Companies, to the extent that the reports or information are included in materials publicly filed with the SEC, by the public filing of such information or reports with the SEC, including, with respect to financial information of the Tested Companies required pursuant to **Sections 8.6(b)**, **8.6(c)** and **8.6(d)**, by the public filing of Form 10-K or 10-Q of Parent or its parent, as applicable, filed with the SEC; provided that to the extent such information relates to a parent of the Tested Companies, if and so long as such parent will have independent assets or operations, such information is accompanied by unaudited consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such parent and its independent assets and operations, on the one hand, and the information relating to Parent and its Subsidiaries on a stand-alone basis, on the other hand.

(n) Certain Notices. Borrower Representative shall notify Administrative Agent in writing:

(i) of the occurrence or existence of any Default or Event of Default immediately after any Responsible Officer of any Credit Party (or Holdings) obtains knowledge thereof and promptly, but in any event within five (5) Business Days, what action (if any) Credit Parties are taking to correct the same

(ii) promptly (but in any event within three (3) Business Days) after any Responsible Officer of any Credit Party (or Holdings) obtains knowledge thereof, the occurrence of any "Event of Default" or "Default" under, and as defined in, the Term Loan Documents;

(iii) promptly (but in any event within five (5) Business Days) after any amendment to the Term Loan Documents, and furnish a copy of such amendment to Administrative Agent; and

(iv) promptly (but in any event within five (5) Business Days) after any Responsible Officer of any Credit Party (or Holdings) obtains knowledge thereof, of any of the following that affects any Credit Party or Subsidiary or their respective Properties: (A) the threat in writing or commencement of any Adverse Proceeding whether or not covered by insurance, if (1) an adverse determination in respect thereof would reasonably be expected to have a Material Adverse Effect or (2) relating to Collateral having a value of more than the Threshold Amount; (B) any material change in any existing Adverse Proceeding; (C) any pending or threatened labor dispute, strike, or walkout, or the expiration of any material labor contract; (D) any default under or termination, cancellation, or suspension of a Material Contract or if any Material Contract is amended in any manner materially adverse to any such Person or any new Material Contract is entered into (in which event Borrowers shall cause the applicable Person to provide Administrative Agent with a copy of such Material Contract, if requested by Administrative Agent); (E) any order, judgment, or decree in an amount exceeding the Threshold Amount; (F) the assertion of any claim against any such Person regarding such Person's use, licensing, or ownership of any Intellectual Property, if an adverse resolution in regard thereto would reasonably be expected to have a Material Adverse Effect; (G) any violation or asserted violation of (1) any Applicable Law (including ERISA, OSHA, FLSA, or any Environmental Laws or securities laws but not any Anti-Terrorism Laws or Anti-Corruption Laws), if an adverse resolution would reasonably be expected to have a Material Adverse Effect and (2) any Anti-Terrorism Laws or Anti-Corruption Laws; (H) any change to any information set forth in any Beneficial Ownership Certification or in any document made or delivered in connection therewith; (I) any such Person's delivery or receipt of any Environmental Notice that would reasonably be expected to have a Material Adverse Effect; (J) the occurrence of any Environmental Release by any such Person or on any Property owned, leased, or Controlled by such Person that would reasonably be expected to have a Material Adverse Effect; (K) the termination of any engagement of, or withdrawal or resignation from such engagement by, any such Person's independent accountants; (L) any notice from any taxing authorities as to claimed deficiencies or any tax Lien exceeding \$250,000; (M) any acceleration of the maturity of any Debt exceeding \$250,000 of any such Person or the occurrence or existence of any event or circumstances that gives the holder of such Debt or securities laws the right to accelerate or terminate any commitment with respect to such Debt; (N) any loss or threatened loss of any material licenses, franchises, or permits of such Person; (O) the pendency of any proceeding for the condemnation or other taking of any of any such Person's Property; and (P) any material amendment or change approved by the board of directors or other Governing Body of any Borrower or Subsidiary to the Projections submitted pursuant to **Section 8.6(i)**.

8.7 Compliance with Laws . Comply with all Applicable Law and cause Holdings to comply with all Applicable Law, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, Anti-Corruption Laws, securities laws and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary for the lawful ownership of its Properties and conduct of its business, unless failure to so comply (other than failure to comply with Anti-Terrorism Laws and Anti-Corruption Laws) or maintain would not reasonably be expected to have a Material Adverse Effect.

8.8 ERISA . (a) Make, or cause to be made, prompt payment of contributions required to meet the minimum funding standards set forth in ERISA with respect to each Credit Party's and ERISA Affiliates' Plans; (b) furnish to Administrative Agent, promptly upon Administrative Agent's request therefor (but, in any event, within five (5) Business Days after receipt of such request), copies of any annual report required to be filed pursuant to ERISA in connection with each such Plan of each Credit Party and ERISA Affiliate; (c) notify Administrative Agent as soon as practicable (but in any event with five (5) Business Days) of any ERISA Event; and (d) furnish to Administrative Agent, promptly upon Administrative Agent's request therefor (but, in any event, within five (5) Business Days after receipt of such request), such additional information concerning any such Plan as may be requested by Administrative Agent from time to time.

8.9 Environmental.

(a) Assessments. If Administrative determines in its Permitted Discretion that there is a reasonable basis on which to conclude there has occurred (i) an Environmental Release on, under, at, or within any Credit Party's or Subsidiaries' Properties or (ii) a violation by any Credit Party or Subsidiary with Environmental Laws, in either case, that would reasonably be expected to be or result in a material violation of Environmental Law or liability to a Credit Party or Subsidiary, in each case of clause (i) or (ii), resulting in liability exceeding the Threshold Amount, promptly upon the written request of Administrative Agent (but, in any event, within forty-five (45) days after receipt of such request), and at Credit Parties' expense, provide Administrative Agent with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to Administrative Agent to assess (i) the presence or absence of any Hazardous Materials and the potential costs in connection with abatement, remediation, cleanup, or removal of any Hazardous Materials found on, under, at, or within any Credit Party's or Subsidiaries' Properties and (ii) the compliance of any Credit Party or Subsidiary with Environmental Laws.

(b) Release. If any Environmental Release occurs or is discovered at or on any Credit Party's or Subsidiary's Property in violation of Environmental Laws and that could be reasonably be expected to result in cost and liability (including, in connection with investigation and remediation, in the aggregate) exceeding the Threshold Amount, act promptly and diligently to report to all appropriate Governmental Authorities as required under Environmental Law and to Administrative Agent the extent of, and to investigate and take remedial action to contain, mitigate, and remediate such Environmental Release; provided, that, (i) if Credit Parties fail to initiate, and to the extent possible, complete such action promptly under the circumstances (and, in any event, within thirty (30) days following notice thereof to Administrative Agent), Administrative Agent may, at its election (but shall have no obligation to do so) and at Credit Parties' sole cost, give such notices, undertake such remediation, and take any and all other actions as it shall deem necessary or advisable to investigate, contain, mitigate, abate, and remediate the Environmental Release and remove such Hazardous Materials and (ii) any investigation covered by this clause (b) shall identify all potential contaminants and the vertical and horizontal extent of the contaminants and the remediation shall eliminate the contamination unless Administrative Agent agrees to an alternative cleanup standard in its discretion.

(c) Compliance. Maintain compliance with all Environmental Laws in all respects, except as could not reasonably be expected to result in cost and liability (including, in connection with investigation and remediation, in the aggregate) exceeding the Threshold Amount.

(d) Hazardous Materials. (i) Generate, use, possess, store, release, treat, and dispose of Hazardous Materials only in the Ordinary Course of Business and in compliance with all Environmental Laws, provided that in no instance may Hazardous Materials be disposed of, abandoned or otherwise deposited (whether by way of an Environmental Release or otherwise) in, at, on or under the Property of any Credit Party or Subsidiary by any Credit Party or Subsidiary or any other Person and (ii) shall not, except in the Ordinary Course of Business of such Person and in compliance with all Environmental Laws, (A) store, or permit any Person to store, any Hazardous Material on any Credit Party's or Subsidiary's Property or (B) transport or permit the transportation of Hazardous Materials to or from any such Real Estate, in each case of clause (i) or (ii), except as could not reasonably be expected to result in cost and liability (including, in connection with investigation and remediation, in the aggregate) exceeding the Threshold Amount.

(e) **Indemnity.** In addition to, and not in limitation of, **Section 12.5** and **Section 15.3**, at all times indemnify, defend and hold harmless each Indemnitee against and from any and all Claims arising under or on account of Environmental Laws or otherwise relating to environmental and health and safety matters, including with respect to (i) the assertion of any Lien thereunder; (ii) any Environmental Release, the threat of any Environmental Release, or the presence of any Hazardous Materials affecting any Credit Party's or Subsidiary's Property, whether or not the same originates or emanates from such Properties or any contiguous real estate, including any loss of value of the Properties as a result of any of the foregoing; (iii) any and all costs of removal or remedial action incurred by Administrative Agent and any costs incurred by any other Person or damages from injury to, destruction of, or loss of natural resources, including all costs of assessing such removal, remediation, injury, destruction, or loss incurred, pursuant to any Environmental Law; (iv) liability for personal injury or Property damage arising under any statutory or common law tort theory (including damages assessed), including for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or caused by any Credit Party or Subsidiary near the Properties; and (v) any other environmental matter affecting the Properties or any of them; provided, however, that in no event shall any Credit Party have any obligation hereunder to indemnify, defend or hold harmless any Indemnitee with respect to any Claims arising under or on account of Environmental Laws or otherwise relating to environmental and health and safety matters that is determined by a court of competent jurisdiction by final and non-appealable judgment binding on such Indemnitee to have resulted from the actual bad faith, gross negligence or willful misconduct of such Indemnitee.

8.10 **Margin Stock.** If so reasonably requested by Administrative Agent, promptly (but, in any event, within five (5) Business Days) after request, furnish Administrative Agent with (a) a statement or statements in conformity with the requirements of Federal Reserve Form U-1 referred to in Regulation U of said Board of Governors and (b) other documents evidencing its compliance with the margin regulations included in said Regulation U, including, if reasonably requested by Administrative Agent, an opinion of counsel in regard thereto from legal counsel to the Credit Parties in form and substance satisfactory to Administrative Agent.

8.11 **Taxes; Claims.** Will, and will cause Holdings and each of its Subsidiaries to, pay (a) all federal, state and other material taxes imposed upon it or any of its Properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine exceeding \$100,000 accrues thereon and (b) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its Properties or assets, prior to the time when any penalty or fine exceeding \$100,000 shall be incurred with respect thereto; provided, no such tax or claim need be paid if it is Properly Contested. The Credit Parties will not, nor will it permit any of its Subsidiaries to, file or consent to the filing of any Consolidated income tax return with any Person (other than any other Credit Party).

8.12 **Receivables; Deposit Accounts and Securities Accounts**

(a) Borrowers agree that in determining which Accounts are Eligible Accounts and which Inventory is Eligible Inventory, Administrative Agent may rely on all statements and representations made by Borrowers with respect thereto in the Borrowing Base Certificate. Borrowers covenant and agree that, to the Credit Parties' knowledge, all Accounts designated as Eligible Accounts in a Borrowing Base Certificate are each a bona fide and valid account representing a bona fide indebtedness incurred by the Customer therein named, for a fixed sum as set forth in the invoice relating thereto (provided immaterial or unintentional invoice errors shall not be deemed to be a breach hereof) with respect to a sale or lease and delivery of goods upon stated terms of a Credit Party, or work, labor or services theretofore rendered by a Credit Party as of the date each Account is created.

(b) Each Customer, to each Credit Party's knowledge, as of the date each Account is created, is solvent and able to pay all Accounts on which the Customer is obligated in full when due. With respect to such Customers of any Credit Party that are not solvent, such Credit Party shall set up on its books and in its financial records bad debt reserves adequate to cover such Accounts in accordance with GAAP.

(c) Each Credit Party's chief executive office is located as set forth on **Schedule 1** to the Collateral Disclosure Certificate. Until written notice is given to Administrative Agent by Borrower Representative of any other office at which any Credit Party keeps its records pertaining to Accounts, all such records shall be kept at such executive office.

(d) The Credit Parties shall instruct their Customers to deliver all remittances upon Accounts (whether paid by check or by wire transfer of funds) to such Blocked Accounts and/or Collection Accounts (and any associated lockboxes) as Administrative Agent shall designate from time to time as contemplated by **Section 8.12(h)** hereof or as otherwise agreed to from time to time by Administrative Agent. Notwithstanding the foregoing, to the extent any Credit Party directly receives any remittances upon Accounts, such Credit Party shall, at such Credit Party's sole cost and expense, but on Administrative Agent's behalf and for Administrative Agent's account, collect as Administrative Agent's property and in trust for Administrative Agent all amounts received on Accounts, and shall not commingle such collections with any Credit Party's funds or use the same except to pay the Obligations, and shall as soon as practicable after the receipt thereof (i) in the case of remittances paid by check, deposit all such remittances in their original form (after supplying any necessary endorsements), and (ii) in the case of remittances paid by wire transfer of funds, transfer all such remittances, in each case, into such Blocked Accounts and/or Collection Accounts. Prior to the occurrence of a Cash Dominion Triggering Event, payments made by a Credit Party's Customers remitted directly to Administrative Agent will be deposited by Administrative Agent in the Blocked Accounts and/or Collection Accounts, and Customer remittances shall only be treated as a repayment of the Loans if Borrowers so elect in a written notice to Administrative Agent.

(e) At any time following the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the right to send notice of the assignment of, and Administrative Agent's security interest in and Lien on, the Accounts to any and all Customers or any third party holding or otherwise concerned with any of the Collateral. At any time after the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the sole right to collect the Accounts, take possession of the Collateral, or both. Administrative Agent's actual out-of-pocket collection expenses, including, but not limited to, stationary and postage, telephone, facsimile, secretarial and clerical expenses and the salaries of any collection personnel used for collection, may be charged to Borrowers' Account and added to the Obligations.

(f) Administrative Agent shall have the right to receive, endorse, assign and/or deliver in the name of Administrative Agent or any Credit Party any and all checks, drafts and other instruments for the payment of money relating to the Accounts, and each Credit Party hereby waives notice of presentment, protest and non-payment of any instrument so endorsed in connection with the operation of any lockbox or Block Account. Each Credit Party hereby constitutes Administrative Agent or Administrative Agent's designee as such Credit Party's attorney with power (i) at any time: (A) during a Cash Dominion Period, to endorse such Credit Party's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment or Collateral; (B) to sign such Credit Party's name on any invoice or bill of lading relating to any of the Accounts, drafts against Customers, assignments and verifications of the Accounts; (C) to send verifications of the Accounts to any Customer in a manner reasonably agreed to between Administrative Agent and Borrower Representative; (D) to sign such Credit Party's name on any financing statements and all other agreements, documents or instruments deemed necessary or appropriate by Administrative Agent to preserve, protect, or perfect Administrative Agent's interest in the Collateral and to file same; and (E) to receive, open and dispose of all mail addressed to any Credit Party at any post office box/lockbox maintained by Administrative Agent for the Credit Parties or at any other business premises of Administrative Agent; and (ii) after the occurrence and during the continuance of an Event of Default: (A) to demand payment of the Accounts; (B) to enforce payment of the Accounts by legal proceedings or otherwise; (C) to exercise all of such Credit Party's rights and remedies with respect to the collection of the Accounts and any other Collateral; (D) to sue upon or otherwise collect, extend the time of payment of, settle, adjust, compromise, extend or renew the Accounts; (E) to settle, adjust or compromise any legal proceedings brought to collect the Accounts; (F) to prepare, file and sign such Credit Party's name on a proof of claim in bankruptcy or similar document against any Customer; (G) to prepare, file and sign such Credit Party's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Accounts; (H) to accept the return of goods represented by any of the Accounts; (I) to change the address for delivery of mail addressed to any Credit Party to such address as Administrative Agent may designate; and (J) to do all other acts and things necessary to carry out this Agreement. All acts of said attorney or designee are hereby ratified and approved, and said attorney or designee shall not be liable for any acts of omission or commission nor for any error of judgment or mistake of fact or of law, unless done maliciously or with gross (not mere) negligence (as determined by a court of competent jurisdiction in a final and non-appealable judgment or order); this power being coupled with an interest is irrevocable until Payment in Full of the Obligations.

(g) Neither Administrative Agent nor any Lender shall, under any circumstances or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Accounts or any instrument received in payment thereof, or for any damage resulting therefrom.

(h) Subject to **Section 8.16** and the terms of the Term Loan Intercreditor Agreement, all proceeds of Collateral and all other amounts at any time received by any Borrower shall be deposited by the Credit Parties into either (i) a lockbox account, dominion account or such other “blocked account” (each a “**Blocked Account**” and collectively the “**Blocked Accounts**”) established at a bank or banks as may be acceptable to Administrative Agent (each such bank, a “**Blocked Account Bank**” and collectively, “**Blocked Account Banks**”) pursuant to an arrangement with such Blocked Account Bank as may be acceptable to Administrative Agent or (ii) a Collection Account. Other than with respect to any Excluded Account, with respect to any Blocked Account, each applicable Credit Party, Administrative Agent and each Blocked Account Bank shall enter into an Article 9 Control Agreement in form and substance satisfactory to Administrative Agent that is sufficient to give Administrative Agent exclusive Article 9 Control over such Blocked Accounts. At any time during a Cash Dominion Period, Administrative Agent shall have the sole and exclusive right to direct, and is hereby authorized to give instructions pursuant to such Article 9 Control Agreements directing, the disposition of funds in the Blocked Accounts and Collection Accounts (any such instructions, an “**Activation Notice**”) to Administrative Agent on a daily basis or at other times acceptable to Administrative Agent, either to a deposit account maintained by Administrative Agent at PNC or by wire transfer to a deposit account at PNC, which such funds may be applied by Administrative Agent to repay the Obligations, and, if an Event of Default has occurred and is continuing, to cash collateralize outstanding Letters of Credit in accordance with **Section 4.6** hereof. Prior to the occurrence of a Cash Dominion Triggering Event, the Credit Parties shall retain the right to direct the disposition of funds in the Blocked Accounts and/or the Collection Accounts, and Administrative Agent agrees not to provide an Activation Notice to any Blocked Account Bank unless a Cash Dominion Triggering Event has occurred and is continuing. In the event that Administrative Agent issues an Activation Notice, Administrative Agent agrees to rescind such Activation Notice at such time that no Cash Dominion Period shall exist (it being understood that, notwithstanding any such rescission, Administrative Agent shall have the right and is authorized to issue an additional Activation Notice if a subsequent Cash Dominion Triggering Event shall have occurred or a Cash Dominion Period shall exist at any time thereafter). All funds deposited in the Blocked Accounts or Collection Accounts (in each case, other than any Excluded Accounts) shall immediately become subject to the security interest of Administrative Agent, for its own benefit and the ratable benefit of the other Secured Parties, and Borrower Representative shall use commercially reasonable efforts to obtain the agreement by each Blocked Account Bank to waive any offset rights against the funds so deposited. Neither Administrative Agent nor any Lender assumes any responsibility for such blocked account arrangements, including any claim of accord and satisfaction or release with respect to deposits accepted by any Blocked Account Bank thereunder. During a Cash Dominion Period, Administrative Agent shall apply all funds received by it from the Blocked Accounts and/or Collection Accounts to (A) relieve the Eligible Accounts associated with such funds as set forth in the then current Borrowing Base Certificate, and (B) the satisfaction of the Obligations (including the cash collateralization of all Obligations relating to any outstanding Letters of Credit in accordance with the provisions of **Section 4.6** hereof) in such order as Administrative Agent shall determine in its Permitted Discretion, subject to Borrowers’ ability to re-borrow Revolving Loans in accordance with the terms hereof and without a permanent reduction of the Revolving Commitment; provided that, in the absence of any Event of Default, Administrative Agent shall apply all such funds representing collection of Accounts first to the prepayment of the principal amount of the Swing Loans, if any, and then to the Revolving Loans.

(i) No Credit Party will, without Administrative Agent’s consent, compromise or adjust any material amount of the Accounts (or extend the time for payment thereof) or accept any material returns of merchandise or grant any additional discounts, allowances or credits thereon except for those compromises, adjustments, returns, discounts, credits and allowances as have been heretofore customary in the Ordinary Course of Business of such Credit Party.

(j) No Credit Party will establish or maintain any Deposit Accounts or Securities Accounts other than Deposit Accounts and Securities Accounts: (i) listed in **Schedule 7.9**; provided that, unless such Deposit Accounts or Securities Accounts are covered either by clause (ii) or clause (iv) below, such Deposit Accounts and Securities Accounts are terminated and closed within the timeframes set forth in **Section 8.16(c)** hereof, (ii) maintained at Administrative Agent; (iii) with the consent of Administrative Agent, maintained at any Permitted Third Party Bank subject to Administrative Agent’s Article 9 Control pursuant to an Article 9 Control Agreement having terms acceptable to Administrative Agent; or (iv) that are Excluded Accounts; provided that the aggregate balance of funds on deposit in all Excluded Accounts opened and maintained pursuant to this clause (iv) shall not at any time exceed \$250,000, unless otherwise approved by Administrative Agent.

(k) (i) Promptly (but, in any event, within ten (10) Business Days) after any Credit Party’s entering into any agreement with any Person pursuant to which such Person will provide merchant card services or credit card processing services to such Credit Party, provide notice of such agreement to Administrative Agent, together with a true and complete copy of such agreement, the name and address of such Person, and such other information regarding the same as Administrative Agent may request from time to time and (ii) upon Administrative Agent’s request, exercise its commercially reasonable efforts to cause such Person to enter into a Third Party Claimant Agreement (and such Credit Party’s compliance with the terms of this clause (k) (ii) shall not diminish Administrative Agent’s rights to establish a Reserve therefor).

8.13 **Covenants Regarding Collateral and Property** . At all times (i) use all its Property in the Ordinary Course of Business and not permit such Property to be used in violation of any Applicable Law or policy of insurance; (ii) maintain, preserve, and do or cause to be done all things necessary to protect all Property used or useful in the conduct of its business, ordinary wear and tear and Loss excepted; and (iii) keep the same in good repair, working order and condition, ordinary wear and tear and Loss excepted.

8.14 **Future Subsidiaries** . Within thirty (30) days following (or at such later date as may be agreed to by Administrative Agent in writing in its discretion) any Person becoming a direct or indirect Subsidiary of any Credit Party, including by any Division (or, with respect to any existing Subsidiary that is an Immaterial Subsidiary, within thirty (30) days (or such longer period of time as is agreed to by Administrative Agent in writing in its discretion) after such Subsidiary ceases to be an Immaterial Subsidiary), provide Administrative Agent with written notice thereof and (a) with respect to all Subsidiaries (other than Foreign Subsidiaries, Foreign Subsidiary Holdcos and Immaterial Subsidiaries), cause such Subsidiary to execute and deliver to Administrative Agent a Joinder Agreement, causing such Subsidiary to become a party to this Agreement, as a joint and several "Borrower" (if such Subsidiary is a wholly-owned Subsidiary of a Borrower) or other "Credit Party" (if otherwise), as the case may be, and a party to a Security Agreement granting a first priority Lien upon its Collateral, subject to Permitted Liens, to secure payment of all Obligations pursuant thereto; (b) cause each Subsidiary that is added as a Borrower to execute and deliver to Administrative Agent one or more Notes in favor of one or more of the Lenders, evidencing the Debts owing to them hereunder, if so requested by such Lenders; (c) cause each Subsidiary that is added as a Credit Party hereto (other than as a Borrower) to execute and deliver to Administrative Agent a Guaranty of all Obligations and a Security Agreement granting a first priority Lien upon its Collateral, subject to Permitted Liens, to secure payment of all Obligations; (d) (i) with respect to all such Subsidiaries (other than Foreign Subsidiaries and Foreign Subsidiary Holdcos), pledge or cause to be pledged one hundred percent (100%) of the Equity Interests of such Subsidiary to Administrative Agent for the benefit of the Secured Parties pursuant to a Security Document and (ii) with respect to Foreign Subsidiaries and Foreign Subsidiary Holdcos, if the Equity Interests of such Foreign Subsidiary or Foreign Subsidiary Holdco, as applicable, are owned by a Credit Party, pledge or cause to be pledged sixty-five percent (65%) (or such greater percentage to the extent requested by Administrative Agent and the pledge thereof would not result in material and adverse tax consequences to any Credit Party or their Affiliates pursuant to the Code) of the Equity Interests of such Foreign Subsidiary or Foreign Subsidiary Holdco, as applicable, to Administrative Agent for the benefit of the Secured Parties pursuant to a Security Document, and, in each case, deliver or cause to be delivered the original certificate(s) evidencing such Equity Interests (if any) and the related undated stock powers executed in blank; and (e) deliver such other documentation as Administrative Agent may request in connection with the foregoing, including appropriate Financing Statements, Article 9 Control Agreements, Third Party Claimant Agreements, Mortgages, evidence of insurance as required by this Agreement or the other Loan Documents, certified resolutions and other organizational and authorizing documents of such Subsidiary, and upon the request of Administrative Agent, favorable opinions of counsel to such Subsidiary (that shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above and the attachment and perfection of security interests granted thereunder), all in form, content, and scope satisfactory to Administrative Agent; provided, however, that (x) nothing in this **Section 8.14** shall authorize any Credit Party or any Subsidiary to consummate any Acquisition or form any Subsidiary, except in conformity with **Section 9.7(e)**; (y) any document, agreement, or instrument executed or issued pursuant to this **Section 8.14** shall be a "Loan Document" for purposes of this Agreement; and (z) unless otherwise agreed to by Administrative Agent in its discretion, none of the Property of any such Subsidiary that becomes a "Borrower" shall be included in the calculation of the Borrowing Base unless and until Administrative Agent shall have (1) conducted a field examination and, if applicable, obtained a Qualified Appraisal of such Property (with each such field examination and appraisal being at such Subsidiaries' sole cost and expense and in excess of any other field examination or appraisal otherwise permitted by this Agreement or the other Loan Documents to be charged to the Credit Parties) and found the results thereof satisfactory, (2) received a revised Borrowing Base Certificate (and all supporting documentation and reports) giving effect to such Property and its inclusion in such calculation, and (3) established such Reserves in connection therewith as Administrative Agent shall require.

8.15 **Further Assurances** . At its expense, promptly, (i) execute and deliver to Administrative Agent, LC Issuer and the Lenders, or cause to be executed and delivered to Administrative Agent, LC Issuer and the Lenders, all documents, agreements, and instruments, including the Mortgages, that are, in Administrative Agent's determination, necessary to (A) correct any omissions in the Loan Documents or any agreement relating to Bank Products; (B) more fully state the Obligations set out in this Agreement or in any other Loan Document or agreement relating to Bank Products; (ii) obtain any consents, as may be necessary or appropriate in connection therewith as may be requested by Administrative Agent; and (iii) deliver such instruments, assignments, title certificates, or other documents or agreements, and take such actions, as Administrative Agent deems appropriate under Applicable Law to evidence or perfect Administrative Agent's Lien in and to any Collateral. Within ten (10) days (or such later date as agreed to by Administrative Agent in its discretion) after the date Holdings first holds or acquires Parent's Equity Interest representing greater than 50% of the aggregate amount of Parent's issued and outstanding Equity Interest, Holdings shall comply with **Section 8.14** (and Borrowers shall cause Holdings to comply with **Section 8.14**) and become a Credit Party hereunder and the other Loan Documents.

8.16 **Post-Closing Obligations**. Credit Parties shall cause the conditions set forth below to be satisfied, on or before the date specified for each condition (or such later date as Administrative Agent may agree in its Permitted Discretion via email), time being of the essence, in a manner satisfactory, in form and substance as applicable, to Administrative Agent in its Permitted Discretion.

(a) **Third Party Claimant Agreements**. The Credit Parties shall use commercially reasonable efforts to provide to Administrative Agent a Third Party Claimant Agreement with respect to the following locations:

- (i) 4815 Ellicott Street Road, Batavia, NY 14020;
- (ii) 549a Aldi Blvd., Mt. Juliet, TN 37122;
- (iii) 5960 Dry Hop Circle, Manhattan, Kansas 66503;
- (iv) 3457 Union Street, North Chili, NY 14514;
- (v) 1001 Bluff Rd., Romeoville, IL 60446;
- (vi) 615 McCall Road, Manhattan, KS 66503;
- (vii) 700 Ellicott St Batavia, NY 14020 Route 89, North East, PA 16428;
- (viii) 1904 N Le Compte Rd Building 5E, Springfield, MO 65802;
- (ix) 198 Newton Street, Fredonia, NY 14063;
- (x) 6710 E N Belt Rd Building 1, Las Vegas, NV 89115;

- (xi) 219 Little Canada Road E., St. Paul, MN 55117;
- (xii) 5778 Baxter Rd Rockford, IL 61109, and
- (xiii) 5501 Route 89, North East, PA 16428.

(b) Control Agreements. Within sixty (60) days following the Closing Date, with respect to any Deposit Accounts or Securities Accounts maintained by the Credit Parties at a depository institution other than PNC, the Credit Parties shall either (i) close and move such Deposit Accounts or Securities Accounts to PNC or (ii) deliver to Administrative Agent fully executed an Article 9 Control Agreements for each such deposit or securities account.

(c) Treasury Management. Within one hundred fifty (150) days following the Closing Date, with respect to the primary Deposit Accounts or Securities Accounts maintained by the Credit Parties at a depository institution other than PNC (other than Excluded Accounts), the Credit Parties shall close and move such Deposit Accounts or Securities Accounts to PNC.

(d) Insurance Endorsements. Within sixty (60) days following the Closing Date, Administrative Agent shall have received lender's loss payable and additional insured endorsements in connection with the insurance policies carried by Credit Parties, in favor of Administrative Agent and showing Administrative Agent as agent for the Secured Parties, each of which shall be in form and substance satisfactory to Administrative Agent.

(e) Mortgages. Within sixty (60) days following the Closing Date, Borrowers will, or will cause the applicable Credit Party to, provide Administrative Agent with a second lien Mortgage with respect to all owned Eligible Real Property, together with (as applicable):

(i) evidence that counterparts of such Mortgage have been duly executed, acknowledged and delivered and are in a form suitable for filing or recording in all filing or recording offices that Administrative Agent may deem reasonably necessary or desirable in order to create a valid and subsisting perfected second Lien on such owned Real Estate in favor of Administrative Agent for the benefit of the Secured Parties and that all filing and recording Taxes and fees have been paid or are otherwise provided in a manner reasonably satisfactory to Administrative Agent;

(ii) an ALTA survey in respect of each such parcel of owned Real Estate (or existing survey or similar documentation together with a no change affidavit of such Mortgage Property);

(iii) zoning report from The Planning & Zoning Resource Corporation or equivalent zoning report or municipal zoning letter disclosing no current material building or zoning violations for such Mortgaged Property, providing that the continued operation of the properties and assets as currently conducted conforms (or is legal non-conforming) with all applicable zoning and building laws, rules or regulations or a zoning endorsement to the applicable Mortgage Policy; and

(iv) a completed standard "life of loan" federal Emergency Management Agency Standard Flood Hazard Determination indicating whether any owned Real Estate is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be located in a special flood hazard area, and evidence of such flood insurance as may be required under applicable law; provided, however, that in the event any improvement on such property is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be located in a special flood hazard area and Borrowers have not obtained flood insurance as required under **Section 8.3**, that property shall be excluded, treated as Excluded Collateral and any Mortgages thereon shall automatically be released.

(f) Licenses. Within thirty (30) days following the Closing Date, Administrative Agent shall have received a supplement to Schedule 7.10(a) setting forth on it with respect to each Credit Party and each of its Subsidiaries as of the Closing Date, all of such Person's Licenses (other than (i) non-exclusive trademark Licenses and similar non-exclusive licenses granted to or by vendors, suppliers, customers, franchisees or branding or marketing partners in the Ordinary Course of Business and (ii) any Licenses to software to the extent such software is fungible, off-the-shelf and reasonably available for purchase by Administrative Agent).

(g) Within one hundred fifty (150) days following the Closing Date, Borrowers shall establish and maintain a separate Royalty Payment Account in which any and all payments in respect of Royalties or Licenses shall be deposited.

All conditions precedent, covenants and representations and warranties contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described in, and within the time periods required by, this **Section 8.16**, rather than as elsewhere provided in the Loan Documents); provided that (x) to the extent any representation and warranty would not be true, or any provision of any covenant breached, because the foregoing actions were not taken on the Closing Date, the respective representation and warranty shall be required to be true and correct in all material respects, and the covenant complied with, at the time the respective action is taken (or was required to be taken) in accordance with the foregoing provisions of this **Section 8.16** and (y) all representations and warranties and covenants relating to the Security Documents shall be required to be true or, in the case of any covenant, complied with, immediately after the actions required to be taken by this **Section 8.16** have been taken (or were required to be taken).

SECTION 9

NEGATIVE COVENANTS

Until Payment in Full of the Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Bank Product Obligations (other than Excluded Bank Product Obligations) that have been Cash Collateralized) and termination of the Commitments, no Credit Party shall, nor shall it permit any Subsidiary to:

9.1 **Debt**. Create, incur, Guarantee, or suffer to exist any Debt, except:

- (a) the Obligations;
- (b) [reserved];
- (c) Permitted Purchase Money Debt, so long as the aggregate outstanding principal amount of such Debt does not, at any one time, exceed \$10,000,000;
- (d) Funded Debt (other than the Obligations, Permitted Purchase Money Debt, the Scheduled Noteholder Debt and Funded Debt as described under, and permitted by, **Section 9.1(f)**), but only to the extent outstanding on the Closing Date and listed on **Schedule 9.1**;

(e) Scheduled Noteholder Debt;

(f) subsequent to the Closing Date, Funded Debt of a Person existing at the time that such Person became a Subsidiary (by Acquisition, an Investment or otherwise) or Funded Debt assumed in connection with any Acquisition or Investment, to the extent that (i) such Debt was not incurred in connection with, or in contemplation of, such Person's becoming a Subsidiary or such Acquisition; (ii) no Borrower or Subsidiary (other than the Credit Parties party to any such Acquisition) shall have any liability or other obligation with respect to such Debt; (iii) the outstanding principal amount of such Debt does not exceed \$1,000,000 in the aggregate, at any time outstanding; and (iv) such Debt is unsecured or is secured only by Liens permitted by **Section 9.2(j)**;

(g) Debt arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business;

(h) Debt incurred in the Ordinary Course of Business with respect to surety, appeal, stay, customs or performance bonds, workers' compensation claims, self-insurance obligations or other similar obligations;

(i) Debt consisting of customary indemnification, purchase price adjustments and similar contingent obligations in favor of purchasers in connection with Permitted Asset Dispositions;

(j) [reserved];

(k) Intercompany Debt, provided that (i) all such Debt shall be unsecured Debt; (ii) all such Debt shall constitute Subordinated Debt, as and when incurred, without necessity of further action on the part of Administrative Agent or Borrower(s) obligated thereon or holding such Debt, (iii) such Debt payable by a Credit Party to a Subsidiary that is not a Credit Party shall not be paid, in whole or in part, except as provided in clause (iv) below, unless and until all Obligations have been Paid in Full; (iv) such Debt payable to a Subsidiary that is not a Credit Party may be paid in accordance with its terms from time to time, but may not be prepaid so long as no Default or Event of Default then exists and none would be caused by such payment being made; (v) such Debt shall be deemed assigned to Administrative Agent as additional Collateral effective with the incurrence thereof without necessity of further action on the part of Administrative Agent or Borrower(s) obligated thereon or holding such Debt, and Administrative Agent at any time and from time to time shall have the right (but not the obligation) to enforce the payment and collection of such Debt owing to a Credit Party and to require that such Debt owing to a Credit Party be evidenced by one or more promissory notes (if not then so evidenced) and be endorsed to and deposited with Administrative Agent to facilitate the assignment thereof to Administrative Agent, and in such event, Administrative Agent shall be a holder in due course thereof; (vi) such Debt shall not be assigned to any Person by the holder thereof, except to Administrative Agent or Term Loan Agent (subject to the Term Loan Intercreditor Agreement) as provided above; (vii) if payable by a Subsidiary that is not a Credit Party to a Credit Party, such Debt shall not be reduced or forgiven, or converted to equity, or be subordinated (except pursuant hereto) by any holder of such Debt; (viii) if any Bankruptcy Event of Default shall have occurred, Administrative Agent shall have the sole and exclusive right (but not the obligation) to file proofs of claim and take other actions, in its discretion, in respect of such Debt in such proceeding and to receive the entirety of any payments made thereon for application to the Obligations; and (ix) such Debt payable to a Subsidiary that is not a Credit Party does not, at any one time, exceed \$500,000;

- (l) Permitted Refinancing Debt of Debt permitted under clauses (c), (d), (f) and (p) in this **Section 9.1**;
- (m) Debt arising in connection with the financing of insurance premiums in the Ordinary Course of Business subject to compliance with **Section 9.14**;
- (n) Debt representing deferred compensation to officers, directors or employees of any Borrower, and other accrued and deferred expenses (including salaries, accrued vacation and other compensation) issued or incurred in the Ordinary Course of Business;
- (o) Debt consisting of unsecured Earn-Outs not exceeding \$2,000,000, purchase price adjustments, indemnification or similar deferred or contingent obligations, seller promissory notes and payment obligations in respect of non-competition agreements incurred in connection with any Acquisition; provided that each such seller promissory note shall be subordinated in right of payment to the Obligations pursuant to a Subordination Agreement on terms acceptable to Administrative Agent;
- (p) Debt incurred under the Term Loan Credit Agreement so long as such Term Loan Debt is subject to the Term Loan Intercreditor Agreement;
- (q) Debt consisting of obligations owing to credit card processors in the Ordinary Course of Business;
- (r) Debt consisting of unsecured obligations owing under any dealer, customer or supplier incentive, supply, license or similar agreements entered into in the ordinary course of business;
- (s) to the extent constituting Debt, customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business;
- (t) Guarantees (i) by a Credit Party with respect to Debt of another Credit Party otherwise permitted pursuant to this **Section 9.1**, and (ii) by a Subsidiary that is not a Credit Party with respect to Debt of any Credit Party or Subsidiary otherwise permitted pursuant to this **Section 9.1**;
- (u) Subordinated Debt in an aggregate amount not exceeding \$2,500,000;
- (v) unsecured Debt in an aggregate amount not exceeding \$1,000,000 to future, current or former officers, managers, consultants, directors, and employees, and their respective estates, spouses or former spouses or Affiliates to finance the purchase or redemption of Equity Interests or other equity-based awards of a Credit Party or Subsidiary or a parent thereof permitted under **Section 9.3**;
- (w) Debt (i) evidenced by the Existing Letter of Credit in an amount not to exceed \$27,725.50, (ii) in respect of Borrowers' commercial credit card program with Regions Bank in an aggregate amount not to exceed \$315,000 and (iii) in respect of Borrowers' automated clearinghouse programs with Regions Bank in an aggregate amount not to exceed \$1,150,000 so long as, in the case of (ii) and (iii), such commercial credit card programs and automated clearinghouse programs with Regions Bank are terminated upon the earlier to occur of (x) Borrowers' satisfaction of the requirement set forth in **Section 8.16(e)** hereof and (y) the date that is one hundred fifty (150) days following the Closing Date; and

(x) any other Debt that is not secured by a Lien and does not exceed a principal amount of \$2,500,000 in the aggregate at any time outstanding.

provided, however, that, for the avoidance of any doubt, and notwithstanding any provision of the foregoing that may be to the contrary, no Borrower shall Guarantee any Debt of any Credit Party except for Debt of another Borrower that is expressly permitted to be created, incurred or assumed pursuant hereto, and Debt consisting of any Obligations.

9.2 **Liens.** Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "**Permitted Liens**"):

(a) Liens (i) in favor of Administrative Agent, LC Issuer, any Lender or any other Secured Party arising pursuant hereto or under any other Loan Document and (ii) subject to the Term Loan Intercreditor Agreement, in favor of the Term Loan Agent;

(b) Purchase Money Liens securing Permitted Purchase Money Debt permitted under this Agreement;

(c) Liens arising as a matter of law for Taxes not yet due or payable or being Properly Contested;

(d) Liens (other than Liens for Taxes or imposed under ERISA or pursuant to any Environmental Law) arising as a matter of law and in the Ordinary Course of Business, but only if (i) payment of the obligations secured thereby is not yet due or payable or is being Properly Contested; (ii) such Liens do not materially impair the value or use of the Property or materially impair operation of the business of any Borrower or Subsidiary; and (iii) such Liens do not secure Debt;

(e) Liens consisting of deposits or pledges made in the Ordinary Course of Business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance and other types of social security or similar legislation, or to secure the performance of tenders, bids, trade contracts and leases (other than Debt), statutory obligations, surety bonds (other than bonds related to judgments or Adverse Proceedings unless permitted by **Section 9.2(g)**), performance bonds, or arising as a result of progress payments under government contracts, obligations owing to credit card processors and other obligations of a like nature incurred in the Ordinary Course of Business, in each case, so long as no foreclosure sale or similar proceeding has been commenced with respect to any portion of the Collateral on account thereof;

(f) Liens in the Ordinary Course of Business that are subject to Third Party Claimant Agreements;

(g) Liens arising as a matter of law by virtue of a judgment or judicial order against any Credit Party or Subsidiary, or any Property of a Credit Party or Subsidiary, as long as not constituting an Event of Default under **Section 11.1(h)**;

(h) easements, rights-of-way, restrictions, covenants or other agreements of record, and other similar charges or encumbrances on Real Estate, that do not secure any monetary obligation and do not interfere with the Ordinary Course of Business;

- (i) normal and customary rights of setoff upon deposits in favor of depository institutions, and Liens of a collecting bank on Payment Items in the course of collection;
- (j) (i) Liens on acquired Property other than Collateral securing Debt permitted under **Section 9.1(f)**; provided that such Liens (i) are not incurred in connection with, or in anticipation of, a Person becoming a Subsidiary or the acquisition of the Property subject to such Lien; (ii) are applicable only to the Property of such Subsidiary or Property acquired (and proceeds thereof) and (iii) do not attach to any other Property of the Credit Parties or any of their Subsidiaries;
- (k) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by any Credit Party or any of its Subsidiaries in the Ordinary Course of Business;
- (l) Liens in favor of customs and revenue authorities arising as a matter of Applicable Law to secure payment of customs duties in connection with the importation of Goods;
- (m) any interest or title of a lessor or sub-lessor under any lease of Real Estate made by any Credit Party or any of its Subsidiaries as lessee or sub-lessee, only to the extent permitted hereunder;
- (n) Liens solely on any cash earnest money deposits made by any Credit Party or any of its Subsidiaries in connection with any letter of intent, or purchase agreement permitted hereunder;
- (o) purported Liens evidenced by the filing of precautionary Financing Statements relating solely to operating leases of personal property entered into in the Ordinary Course of Business;
- (p) Liens existing on the Closing Date and listed on **Schedule 9.2**, including Liens securing Permitted Refinancing Debt permitted under **Section 9.1(l)**;
- (q) Liens incurred under or permitted pursuant to the Term Loan Debt Documents;
- (r) Liens on cash collateral in favor of Regions Bank securing the Debt of Borrowers evidenced by (i) the Existing Letter of Credit in an aggregate amount not to exceed \$29,111.78, (ii) commercial credit card program with Regions Bank in an aggregate amount not to exceed \$315,000 and (iii) automated clearinghouse programs with Regions Bank in an aggregate amount not to exceed \$1,150,000; provided that, in each case, upon satisfaction of the Borrowers' obligations to Regions Bank in respect of the Existing Letter of Credit, commercial credit card program with Regions Bank and automated clearinghouse programs with Regions Bank, in each case, such cash collateral shall have been returned to the Borrowers in accordance with the terms of that certain pay-off letter agreement dated as of August 9, 2023 between the Borrowers and Regions Bank;
- (s) other Liens securing Debt or other obligations permitted pursuant to this Agreement in an aggregate principal amount at any one time outstanding not to exceed \$2,500,000; and
- (t) solely to the extent constituting Liens, "Permitted Asset Dispositions" permitted under clause (d)(3), (4) or (5) of such term.

9.3 **Restricted Payments** . Declare or make any Restricted Payment, except the following:

- (a) [reserved];
- (b) any Subsidiary (other than a Borrower) may pay dividends or make other distributions to a Credit Party or another Subsidiary that is wholly-owned by such Credit Party (including any Borrower);
- (c) any Credit Party may pay dividends or make other distributions to another Credit Party (other than to Holdings (in the event Holdings becomes a Credit Party));
- (d) each Credit Party and each Subsidiary may: (i) redeem, repurchase, retire or otherwise acquire Equity Interests to the extent such redemption, repurchase, retirement or other acquisition is deemed to occur upon exercise of stock options if such Equity Interests represent a portion of the exercise price of such options; and (ii) make cash payments in lieu of the issuance of fractional shares or interests in connection with the exercise of warrants, options or other rights relating to Equity Interests of a Credit Party or any Subsidiary, so long as (x) any such cash payment is not made for the purpose of evading the limitations set forth in this **Section 9.3** and (y) such cash payments do not exceed \$1,000,000 in any Fiscal Year;
- (e) any Credit Party (including any Borrower) may pay dividends or make distributions on Equity Interests that accrue (but are not paid in cash) or are paid in-kind with Qualified Equity Interests;
- (f) so long as no Default or Event of Default exists or would result therefrom, the Credit Parties and Subsidiaries may make Permitted Tax Distributions subject to the limitations set forth in such definition;
- (g) (i) from and after the Fiscal Year Ending December 31, 2025, Restricted Payments in an aggregate amount not to exceed the Permitted Restricted Payment Amount in any Fiscal Year shall be permitted to be made so long as (and only so long as) (u) no Default or Event of Default then exists or would result from the making of such Restricted Payment, (v) the Total Net Leverage Ratio calculated as of the last day of the Fiscal Month ending immediately prior to the date of the making of such Restricted Payment shall be less than 3:00:1.00, (w) Consolidated EBITDA for the trailing twelve month period ending as of the last day of the Fiscal Month ending immediately prior to the date of the making of such Restricted Payment is not less than \$60,000,000, (x) Liquidity (calculated on a Pro Forma Basis after giving effect to the making of such Restricted Payment) for (A) the period of 30 consecutive days prior to the making of such Restricted Payment and (B) as of the date of the making of such Restricted Payment, in each case of clauses (A) and (B) is not less than \$50,000,000, (y) no Financial Covenant Equity Cure shall have been made at any time during the twelve (12) month period ending on the date such Restricted Payment is made, and (z) Administrative Agent shall have received a certificate of a Responsible Officer of Borrower Representative, in form and substance reasonably satisfactory to Administrative Agent, certifying as to compliance with the foregoing subclauses (i)(u) through (z) and including within it a calculation of the Permitted Restricted Payment Amount and (ii) from and after Fiscal Year Ending December 31, 2025, Restricted Payments shall be permitted to be made so long as (and only so long as) (w) no Event of Default then exists or would result from the making of such Restricted Payment, (x) the Total Net Leverage Ratio calculated as of the last day of the Fiscal Month ending immediately prior to the date of the making of such Restricted Payment shall be equal to or less than 2:00:1.00, (y) both Excess Availability as of the date of the making of such Restricted Payment and Average Excess Availability for the 30 days period prior to the making of such Restricted Payment is not less than an amount equal to 20% of the Revolving Commitments, and (z) Administrative Agent shall have received a certificate of a Responsible Officer of Borrower Representative, in form and substance reasonably satisfactory to Administrative Agent, certifying as to compliance with the foregoing subclauses (ii)(w) through (z) and including within it a calculation of the Restricted Payment to be made pursuant to this clause (ii);

(h) any Credit Party or any Subsidiary may make Restricted Payments to any parent of Parent in amounts required for such parent to pay: (i) franchise, excise and similar taxes, and other fees and expenses, required to maintain its corporate or other legal existence; (ii) [reserved]; (iii) reasonable and documented general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any parent that are attributable to Parent's ownership interest in the Credit Parties; and (iv) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated); and

(i) any Credit Party or any Subsidiary may make Restricted Payments in the form of Subordinated Debt and payments of such Subordinated Debt to pay for the repurchase, redemption, retirement or other acquisition of Equity Interests or other equity-based awards of a Credit Party or a Subsidiary or a parent thereof held by any future, current or former officers, managers, consultants, directors, and employees of the Credit Parties, their Subsidiaries or any parent thereof, and their respective estates, spouses or former spouses or Affiliates; provided that the aggregate amount of Restricted Payments made under this clause (i) shall not exceed \$1,000,000 during the term of this Agreement.

Notwithstanding the foregoing, the Material Transfers Prohibition shall apply to this **Section 9.3**.

9.4 Investments . Make any Investment, except the following:

(a) Investments in Subsidiaries and other Investments, in each case, to the extent existing on the Closing Date and described on **Schedule 9.4** and any modification, replacement, renewal, reinvestment or extension thereof so long as the amount of the original Investment is not increased in connection with such modification, replacement, renewal, reinvestment or extension (unless such increase is otherwise permitted pursuant to another clause of this **Section 9.4**);

(b) Investments in cash or Cash Equivalents;

(c) Guarantees permitted pursuant to **Section 9.1**;

(d) deposits permitted by **Section 9.2(e)** or **Section 9.2(n)**;

(e) Swap Agreements entered into in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property, and not for purposes of speculation;

(f) Equity Interests or obligations issued to any Credit Party or Subsidiary by any Person (or the representative of such Person) in respect of Debt of such Person owing to such Credit Party or Subsidiary in connection with the insolvency, bankruptcy, receivership, or reorganization of such Person or a composition or readjustment of the Debts of such Person;

(g) advances to an officer or employee for salary, travel expenses, commissions and similar items in the Ordinary Course of Business;

- (h) Investments constituting deposits for the purchase of goods or services made in the Ordinary Course of Business;
- (i) prepaid expenses and extensions of trade credit made in the Ordinary Course of Business and consistent with customary credit practices and policies with customary credit practices and policies;
- (j) deposits with financial institutions (including PNC) expressly permitted hereunder;
- (k) Permitted Acquisitions; provided that the amount of Acquisitions under this clause (k) and Investments under clause (q) and clause (t) below, of Persons that do not become Credit Parties or assets that do not become Collateral shall not exceed \$2,500,000 in the aggregate during the term of this Agreement;
- (l) Investments made after the Closing Date (i) in a Credit Party; or (ii) by any Subsidiary that is not a Credit Party in any other Subsidiary that is not a Credit Party in an aggregate amount not to exceed \$2,500,000 during the term of this Agreement;
- (m) Intercompany Debt, subject to **Section 9.1(k)**;
- (n) to the extent constituting Investments, fundamental changes permitted pursuant to **Section 9.7**;
- (o) Investments held by any Person that becomes a Subsidiary after the Closing Date in a transaction permitted pursuant to this Agreement, to the extent that such Investments (i) were in existence at the time such Person became a Subsidiary, and (ii) were not made in contemplation of, or in connection with, such Person becoming a Subsidiary;
- (p) promissory notes and other non-cash consideration received in connection with a Permitted Asset Disposition permitted by clause (l) of the definition thereof;
- (q) Investments described in clause (b) or (c) of such term (provided that any Acquisition shall be required to be, and must comply with all of the provisions and conditions of the term, Permitted Acquisition) made with (i) net cash proceeds received by Parent after the Closing Date (from any Person other than a Credit Party or a Subsidiary) as a contribution to Parent's equity capital (other than in respect of Disqualified Equity Interests), (ii) net cash proceeds received by the Parent from the issuance of Equity Interests that are not Disqualified Equity Interests of Parent (to any Person other than a Credit Party or Subsidiary), or (iii) Equity Interests of Parent that are not Disqualified Equity Interests; provided that the amount of Investments under this clause (q), under clause (k) above and under clause (t) below, in Persons that do not become Credit Parties or assets that do not become Collateral shall not exceed \$2,500,000 in the aggregate during the term of this Agreement;
- (r) Investments consisting of non-cash loans to one or more directors, officers, employees or consultants of Parent, any Subsidiary or a parent of Parent to finance the acquisition of Equity Interests in Parent or any parent of Parent;
- (s) Loans and advances to any parent of Parent in lieu of and not in excess of the amount of Restricted Payments to the extent permitted to be made to such parent in accordance with **Section 9.3**;

(t) other Investments (other than any Acquisition) in an amount not exceeding \$2,500,000 outstanding at any time; provided that the aggregate amount of Investments under this clause (t) and clause (q) and clause (k) above in Persons that do not become Credit Parties or assets that do not become Collateral shall not exceed \$2,500,000 in the aggregate; and

(u) Investments in an unlimited amount shall be permitted to be made so long as (and only so long as) (w) no Event of Default then exists or would result from the making of such Restricted Payment, (x) the Total Net Leverage Ratio calculated as of the last day of the Fiscal Month ending immediately prior to the date of the making of such Investment shall be equal to or less than 2:00:1.00, (y) Excess Availability as of the date of making such Investment and Average Excess Availability for the 30 day period prior to the making of such Investment is not less than an amount equal to \$12,500,000, and (z) Administrative Agent shall have received a certificate of a Responsible Officer of Borrower Representative, in form and substance reasonably satisfactory to Administrative Agent, certifying as to compliance with this clause (u).

Notwithstanding the foregoing, in no event shall any Credit Party make, or permit any other Credit Party to make, any Investment (i) that results in or facilitates in any manner any Restricted Payment not otherwise permitted under the terms of **Section 9.3** and (ii) in or to any Affiliate or Subsidiary that is not a Credit Party consisting of Intellectual Property (or exclusive rights thereto) constituting Collateral or any other Collateral that is material to the business of Parent and its Subsidiaries (it being understood that any such Collateral with a fair market value in excess of Threshold Amount shall be deemed to be material to the business of Parent and its Subsidiaries) (the foregoing requirement, the "Material Transfers Prohibition").

9.5 Disposition of Assets. Make or consummate any Asset Disposition, except a Permitted Asset Disposition. Notwithstanding the foregoing, the Material Transfers Prohibition shall also apply to this **Section 9.5**.

9.6 Restrictions on Payment of Certain Debt. Make, or permit any Subsidiary to make, any payment (whether a voluntary payment, mandatory payment, prepayment, redemption, retirement, defeasance, acquisition, or deposit) or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Debt, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Debt, except:

(a) payments of Debt secured by a Permitted Lien if the asset securing such Debt has been sold or otherwise disposed of in a transaction permitted hereunder;

(b) voluntary prepayments of Intercompany Debt permitted by **Section 9.1(k)**; provided that no voluntary prepayments shall be made by a Credit Party to a non-Credit Party;

(c) Permitted Refinancing Debt permitted pursuant to **Section 9.1(l)**;

(d) any Credit Party or any Subsidiary may make (i) payments of regularly scheduled interest and principal payments as and when due in respect of the Term Loan Debt; (ii) payments of costs, expenses, fees, make-whole premiums, indemnity payments and similar payments (but not payments on account of principal or interest) in respect of the Term Loan Debt, and (iii) so long as no Default or Event of Default exists or would result therefrom, payments of regularly scheduled interest and principal payments as and when due in respect of Scheduled Noteholder Debt;

(e) any Credit Party or any Subsidiary may make mandatory principal prepayments or payments, as applicable, of the Term Loan Debt required pursuant to Section 2.05(c)(ii), (iii), (iv) and (v) of the Term Loan Credit Agreement as and when due in accordance with the terms of the Term Loan Credit Agreement;

(f) any Credit Party or any Subsidiary may make voluntary prepayments of the Term Loan Debt (i) pursuant to Section 2.05(b) of the Term Loan Credit Agreement so long as the Payment Conditions have been satisfied or (ii) such voluntary prepayment is funded or prepaid solely from proceeds of issuances of Equity Interests of Holdings, Parent or any other Credit Party or an Affiliate of any Credit Party;

(g) any Credit Party or any Subsidiary may make mandatory principal prepayments of the Term Loan Debt pursuant to Section 2.05(c)(i) of the Term Loan Credit Agreement so long as, with respect to each such payment, (i) the applicable Specified Term Loan ECF Prepayment Conditions (as defined in the Term Loan Intercreditor Agreement) have been satisfied and (ii) Borrower Representative shall have delivered to Administrative Agent not less than two (2) Business Days prior to making any such payment, a certificate in form and substance reasonably satisfactory to Administrative Agent certifying as to compliance with the items described in the foregoing clauses (i) and (ii) of this paragraph and attaching calculations for clause (i); and

(h) payment of interest and principal payments, and payment of reasonable fees, costs and expenses, as and when due in respect of any other Debt permitted under **Section 9.1** (other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof and Scheduled Noteholder Debt other than in accordance with clause (d) above).

9.7 Fundamental Changes .

(a) Merge, Divide, combine, or consolidate with or into any Person, or liquidate (or suffer any liquidation), wind up its affairs, or dissolve itself (or suffer any dissolution), in each case whether in a single transaction or in a series of related transactions, except that so long as no Default or Event of Default then exists or would result therefrom (i) any Credit Party or Subsidiary that is not a Credit Party may merge with, or sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets to, any Credit Party (including any Borrower), and any Credit Party may Divide itself into two or more Credit Parties; provided that, (A) if any Borrower is party to any such merger, such Borrower must be the surviving Person; and (B) in any Division of any Credit Party, the Persons resulting from such Division must all become Credit Parties of the same type; upon such Division becoming effective; e.g., all Persons resulting from the Division of a Borrower must become Borrowers, in accordance with **Section 8.14**; (ii) any Domestic Subsidiary that is not a Credit Party may merge with, or sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets to, any other Domestic Subsidiary that is not a Credit Party, or Divide itself into two or more Domestic Subsidiaries that are not Credit Parties; (iii) any Foreign Subsidiary may merge with, or sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets to, any other wholly owned Foreign Subsidiary or Divide itself into two or more Foreign Subsidiaries; (iv) any Subsidiary (other than a Credit Party) may, in accordance with Applicable Law, liquidate or dissolve itself into a Credit Party or another Domestic Subsidiary that is wholly owned by a Credit Party; and (v) any Foreign Subsidiary (other than a Credit Party) of a Credit Party may liquidate or dissolve itself into another wholly owned Foreign Subsidiary of a Credit Party in accordance with Applicable Law.

(b) Without giving Administrative Agent at least thirty (30) days prior written notice thereof (or such other notice as is acceptable to Administrative Agent) and complying with all requirements of Administrative Agent in regard thereto, including with respect to execution and delivery of all documents, certificates, and information requested by Administrative Agent to maintain the validity, perfection, and priority of the security interests of Administrative Agent in the Collateral, (i) change its legal name or the jurisdiction in which it is organized; (ii) conduct business under any registered trade name, assumed name, or fictitious name that was not listed in **Schedule 7.4** as of the Closing Date; (iii) change its tax, charter, or other organizational identification number; (iv) change its organizational form (i.e., corporation, limited liability company, partnership, etc.); or (v) change the location of its chief executive office or other office where books or records are kept.

(c) Locate its chief executive office or keep its books and records in any jurisdiction other than in a State within the United States of America or the District of Columbia;

(d) Amend, restate, amend and restate, or otherwise modify its Organizational Documents in any manner that would be contrary to the terms and conditions of this Agreement or the other Loan Documents or in any manner that could be adverse to any Secured Party or would reasonably be expected to have a Material Adverse Effect;

(e) Form any Subsidiary or consummate any Acquisition except a Permitted Acquisition or make an Investment other than permitted Investments; provided, however, any Credit Party or any Subsidiary may (i) form a Subsidiary or (ii) consummate a Permitted Acquisition, so long as, in each case, such Borrower and each Person that becomes a Subsidiary on account thereof complies with **Section 8.14** and **Section 8.15**, to the extent applicable;

(f) Permit any Subsidiary to issue any additional Equity Interests except director's qualifying shares and Equity Interests to its immediate parent;

(g) Become a partner or joint venturer with any third party after the Closing Date;

(h) Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with **Section 1.2** or change its year-end for accounting purposes from the Fiscal Year ending December 31;

(i) File or consent to the filing of any consolidated income tax return with any Person other than Credit Parties and Subsidiaries; or

(j) (i) Engage in any business other than a business in substantially the same field as the business conducted by Credit Parties and the Subsidiaries on the Closing Date or extensions thereof and businesses incidental, reasonably related or ancillary to any of the foregoing; (ii) engage in any business or other activity that is not insured by such policies of insurance required by **Section 8.3**; or (iii) permit or undergo any changes in its business and related activities that could result in the termination, revocation, ineffectiveness, or unenforceability of any of such policies of insurance.

9.8 Restrictive Agreements; Certain Restrictions; Inconsistent Agreements.

(a) Become a party to any Restrictive Agreement, except a Restrictive Agreement (a) in effect on the Closing Date and listed on **Schedule 7.17**; (b) relating to secured Debt permitted hereunder, as long as the restrictions apply only to collateral for such Debt; (c) containing customary restrictions on assignment in leases and other contracts; (d) [reserved]; (e) containing customary restrictions related to the sale of assets (to the extent such sale is permitted pursuant to **Section 9.5**) that limit the encumbrance of such assets pending the consummation of such sale; (f) contained in the organizational or constitutional documents and agreements or any related joint venture or similar agreements binding on or applicable to any Subsidiary that is not a wholly-owned Subsidiary (but only to the extent such encumbrance or restriction covers the assets of such Subsidiary or any Equity Interests in such Subsidiary); (g) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted pursuant to **Section 9.5** pending the consummation of such sale; or (h) relating to Debt permitted hereunder, as long as Borrower Representative shall have determined in Good Faith that such encumbrances and restrictions will not affect its obligation or ability to make any payments required hereunder or under any other Loan Document.

(b) Create or suffer to exist any encumbrance or restriction on the ability of a Subsidiary to make any Restricted Payment to a Credit Party or of any Credit Party to make any Restricted Payment to another Credit Party, other than restrictions under this Agreement and the other Loan Documents or in effect on the Closing Date as shown on **Schedule 7.17**.

(c) Become party to any contract or agreement that would violate the terms hereof, any other Loan Document, or any agreements relating to Bank Products.

9.9 Affiliate Transactions. Enter into or be party to any transaction with an Affiliate, except the following:

(a) transactions that are expressly permitted under this Agreement or any other Loan Documents;

(b) payment or provision of reasonable compensation, benefits (including Qualified Equity Interest grants, issuances, sales or awards) and indemnities to consultants, officers and employees for services and loans and advances permitted by **Section 9.4(g)**, including reasonable indemnification and severance arrangements;

(c) payment of usual and customary directors' fees and indemnities in the Ordinary Course of Business;

(d) transactions with Affiliates consummated on or before the Closing Date and listed on **Schedule 9.9**;

(e) transactions solely among Credit Parties or Subsidiaries that are not otherwise prohibited by this Agreement;

(f) contributions to the capital of a Credit Party or Subsidiary, or issuances of Equity Interests of a Credit Party or Subsidiary, to the extent otherwise permitted by this Agreement; and

(g) other transactions with Affiliates not otherwise specifically covered in this **Section 9.9** upon fair and reasonable terms that are not substantially less favorable to the affected Credit Party(ies) than would be obtained in a comparable arm's-length transaction with a non-Affiliate, and otherwise do not contravene any term of this Agreement or any other Loan Document.

9.10 Plans. (a) Become a Plan; (b) cause or permit any ERISA Affiliate to cause or permit to occur any event that could result in the imposition of a Lien under Section 412 of the Code or Section 302 or 4068 of ERISA; or (c) cause or permit to occur an ERISA Event that has resulted or would reasonably be expected to result in a Material Adverse Effect.

9.11 **Sales and Leasebacks.** Enter into any arrangement, whereby one Person shall, directly or indirectly, sell or transfer any Property to another Person who shall then or thereafter rent or lease as lessee such Property or any part thereof or other Property that such Person intends to use for substantially the same purpose or purposes as the Property sold or transferred other than as permitted by clause (o) of the definition of Permitted Asset Disposition.

9.12 **Certain Agreements.** (a) Permit any Material Contract to be cancelled or terminated before its stated maturity or expiration date other than in accordance with its terms or to the extent replaced by another agreement; (b) amend, restate, amend and restate, supplement, waive any term of, consent to any change in, or otherwise modify any Material Contract in a manner adverse to any Secured Party; (c) any material default in the performance under any Material Contract; or (d) agree to or accept any waiver under any Material Contract that would adversely affect the rights of any Secured Party; provided, however, that nothing in this **Section 9.12** shall prohibit any Permitted Refinancing Debt or the repayment, prepayment, retirement, or extinguishment of any Debt, to the extent the same is otherwise permitted to be made or incurred under this Agreement and the other Loan Documents.

9.13 **Disqualified Equity Interests.** Issue or suffer to exist with respect to such Person any Disqualified Equity Interests unless the obligations in respect of such Disqualified Equity Interests constitute Debt permitted by **Section 9.1**.

9.14 **Finance Insurance Premiums.** Enter into any premium finance arrangements to finance all or a portion of any insurance premiums unless the provider of such financing shall have entered into an agreement with Administrative Agent (in form and substance satisfactory to Administrative Agent) pursuant to which, among other things, such financing provider agrees not to cancel any related insurances policies without first having provided Administrative Agent with at least thirty (30) days' prior written notice thereof.

9.15 **Holdings.** Solely with respect to Holdings, (a) engage in any business or business activity other than (i) the ownership and acquisition of Equity Interests in the Parent and its Subsidiaries, together in each case with activities related, ancillary or incidental thereto, (ii) the actions required or advisable by law to maintain its existence and separate corporate or other legal structure, (iii) the payment of taxes and other customary obligations, (iv) the issuance, sale and redemption of Qualified Equity Interests, (v) the receipt, holding (but not in excess of five (5) days) and further distribution of the proceeds of Restricted Payments permitted by **Section 9.3**, (vi) the holding of directors' and shareholders' meetings, preparation of corporate and similar records and other activities required or advisable to maintain its existence and separate corporate or other legal structure, (vii) the preparation of reports to, and notices to and filings with, Governmental Authorities and to the holders of its Equity Interests, and (viii) other activities related, ancillary or incidental to its maintenance and continuance and to the foregoing activities, (b) (i) hold any asset other than Equity Interests in the Parent (other than the proceeds of Restricted Payments that it is allowed to hold for no longer than five (5) days), (ii) incur, or have any obligation with respect to, any Debt or (iii) issue any Disqualified Equity Interests, (c) hold proceeds of Qualified Equity Interests issued by it for longer than three (3) Business Days, (d) make any Restricted Payment other than Restricted Payments permitted by **Section 9.3** or (e) cease to remain Parent's sole managing member (as provided in Parent's limited liability company agreement as in effect on the Closing Date). For the avoidance of doubt any proceeds of Equity Interest that are received by Holdings shall be contributed by it to Parent as an equity Investment in Parent within three (3) Business Days after receipt of such proceeds.

SECTION 10

FINANCIAL COVENANTS

10.1 **Financial Covenants.** Until Payment in Full of the Obligations (other than contingent indemnification obligations as to which no claim has been asserted), Credit Parties shall comply, or cause compliance with, each of the following covenants:

(a) **Total Net Leverage Ratio.** As of the last day of each Testing Period listed in the table below, the Total Net Leverage Ratio shall be less than or equal to the corresponding amount set forth in the table below:

<u>Testing Period</u>	<u>Maximum Total Net Leverage Ratio</u>
March 31, 2025	4.00:1.00
June 30, 2025	4.00:1.00
September 30, 2025	4.00:1.00
December 31, 2025	3.50:1.00
March 31, 2026	3.50:1.00
June 30, 2026	3.50:1.00
September 30, 2026	3.50:1.00
December 31, 2026 and the end of each fiscal quarter thereafter	3.00:1.00

(b) **Fixed Charge Coverage Ratio.** As of the last day of each Testing Period the Fixed Charge Coverage Ratio shall equal or exceed 1.10 to 1.00.

(c) **Minimum Liquidity.** Liquidity shall equal or exceed at all times \$7,500,000.

SECTION 11

EVENTS OF DEFAULT; REMEDIES UPON DEFAULT

11.1 **Events of Default.** Each of the following shall be an “Event of Default” hereunder and under the other Loan Documents (called herein and therein an “**Event of Default**”), if the same shall occur for any reason whatsoever, whether voluntary or involuntary, pursuant to any judgment or order of any court or any order, rule, or regulation of any Governmental Authority, or otherwise:

(a) **Payment.** Any Obligor shall fail to pay (i) when the same become due and payable (whether at stated maturity, as a mandatory prepayment, on demand, upon acceleration, or otherwise) any amount of principal of any Loan or any unreimbursed draws under Letters of Credit (to the extent that such unreimbursed draw has not been refinanced by a Borrowing in accordance with **Section 2.4(b)(i)**) or (ii) within five (5) Business Days after the same become due and payable, any other Obligations; or

(b) **Certain Covenants.** Any Credit Party shall default in the performance of any agreement, covenant, or obligation contained in either: (a) **Section 8.1, 8.2, 8.3, 8.4(a), 8.6(a), 8.6(m), 8.6(n), 8.10, 8.12, 8.14, 8.15 or 8.16**, or any **Section of Section 9**, or any **Section of Section 10**; (b) **Section 8.6(b), 8.6(c), 8.6(d), 8.6(e), 8.6(f), 8.6(g), 8.6(i), 8.6(j) or 8.6(k)** and such default shall not have been cured to Administrative Agent’s satisfaction or Required Lenders’ satisfaction within five (5) days; or (c) Sections 6, 12, 13 or 14 of the Security Agreement; or

(c) Other Covenants. Any Obligor shall default in the performance of any other agreement, covenant, or obligation contained in this Agreement or any other Loan Document and not provided for elsewhere in this **Section 11.1** and such default shall not have been cured to Administrative Agent's satisfaction or Required Lenders' satisfaction within thirty (30) days after the sooner to occur of (i) receipt by such Obligor of notice of such default from Administrative Agent or any Lender and (ii) the date on which such default first became known to a Responsible Officer; provided, however, that such notice and opportunity to cure shall not apply in the case of any such default that is not capable of being cured; or

(d) Representations. Any representation or warranty made by or on behalf of any Obligor in this Agreement (including, particularly, but without limitation, **Section 7**), or in any other Loan Document, that (i) if subject to a materiality, "Material Adverse Effect" or similar qualification, shall be untrue, incorrect, or misleading when made or deemed made or (ii) if not subject to a materiality, "Material Adverse Effect" or similar qualification, shall be untrue, incorrect, or misleading in any material respect when made or deemed made; or

(e) Revocation. Either: (i) Any Obligor shall repudiate, revoke, or attempt to repudiate or revoke, in whole or in part, any of its Obligations hereunder or under any other Loan Document; or (ii) any Obligor shall deny or contest the validity or enforceability of this Agreement or any other Loan Document or all or any part of the Obligations or the existence, perfection or priority of any Lien granted to Administrative Agent or any Lender as security for payment or performance of any Obligations; or

(f) Cessation of Lien. Either: (i) this Agreement or any other Loan Document, or any material provision hereof or thereof, shall cease to be in full force or effect at any time after its execution and delivery (other than as expressly permitted hereunder or thereunder or by waiver or release thereof by Administrative Agent, LC Issuer, a Lender, the Lenders or a Bank Product Provider, as applicable, made in accordance herewith), it being understood that the application of any Write-Down and Conversion Powers by an EEA Resolution Authority (or the public announcement of the impending application of such powers) with respect to any liabilities of a Credit Party hereunder or under any other Loan Document shall be deemed an Event of Default under this Section 11.1(f); or (ii) any Security Document (including this Agreement) shall for any reason fail or cease to create a valid, perfected, and, except to the extent permitted by the terms hereof or thereof, first-priority Lien in favor of Administrative Agent, for the benefit of the Secured Parties, on any material portion of the Collateral purported to be covered thereby; or (iii) any Swap Agreement entered into between any Obligor or a Subsidiary, on the one hand, and Administrative Agent or any Lender (or any of their respective Affiliates), on the other hand, shall be terminated as a result of a default or event of default by such Obligor or Subsidiary, or otherwise is revoked; or

(g) Cross Default. Obligors or Subsidiaries, or any one or more of them, shall fail to make any payment required to be made in respect of outstanding Debt under the Term Loan Credit Agreement or in respect of any other outstanding Debt (other than the Obligations, to the extent described in **Section 11.1(a)**) having an aggregate outstanding principal amount in excess of the Threshold Amount (determined singly or in the aggregate with other Debt of such Obligors or Subsidiaries similarly affected) when due after the expiration of any applicable grace period, or any event or condition shall occur that results in the acceleration of the maturity of such Debt (including any required mandatory prepayment or "put" of such Debt to any such Person) or enables (or, with the giving of notice or passing of time or both, would enable) the holder(s) of such Debt or a commitment related to such Debt (or any Person acting on such holders' behalf) to accelerate the maturity thereof or terminate any such commitment before its normal expiration (including any required mandatory prepayment or "put" of such Debt to such Person), or there shall occur any default under any Bank Product Agreement (including any Swap Agreement) after the expiration of any applicable cure period set forth therein; or

(h) Judgment. Either (i) A judgment, order, or award for the payment of money shall be entered against any Obligor or Subsidiary in an amount that exceeds, individually or cumulatively with all unsatisfied judgments, orders, or awards against all the Obligors and Subsidiaries, insurance coverage therefor (as provided by an insurer satisfying the requirements of **Section 8.3(a)** that has been notified of the potential claim and has not denied coverage in writing) by an amount greater than \$5,000,000 and the same shall remain undischarged, undismitted, and unstayed for more than thirty (30) days; or (ii) any non-monetary judgment or order shall be rendered against any Obligor or Subsidiary that would reasonably be expected to have a Material Adverse Effect, and shall remain undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days; or (iii) any order, judgment or decree shall be entered against any Obligor or Subsidiary decreeing the dissolution or split up of such Person that would reasonably be expected to have a Material Adverse Effect and such order, judgment or decree shall remain undischarged, unvacated, unbonded or unstayed for a period in excess of thirty (30) days; or (iv) any Person shall issue, order, or institute any levy upon, or attachment, garnishment, or other seizure that is not released, vacated or fully bonded within thirty (30) days of (A) any material portion of the Collateral or (B) any other assets of any Obligor having a value (at greater of cost or market) in excess of \$5,000,000; or

(i) Loss. Any Loss shall occur with respect to any Collateral for which no insurance exists covering such Loss or having a value (determined, for purposes of this clause (i), as the greater of cost or market) exceeding any insurance coverage therefor (as provided by an insurer satisfying the requirements of **Section 8.3(a)** that has been notified of the potential claim and has not denied coverage in writing) by an amount greater than the Threshold Amount; or

(j) Conduct. (i) The Obligors and Subsidiaries collectively shall be enjoined, restrained, or in any way prevented by any Governmental Authority from conducting all or any material part of their business; (ii) the Obligors and Subsidiaries shall suffer the loss, revocation, or termination of any material license, permit, lease, or agreement necessary to its business; (iii) any cessation of any material part of the business of the Obligors and Subsidiaries shall occur; or (iv) any strike, lockout, labor dispute, embargo, act of terrorism, or act of God, or other casualty shall occur that causes, for more than thirty (30) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Obligor or any Subsidiary shall occur, if any such event or circumstance has a Material Adverse Effect; or

(k) Voluntary Bankruptcy. Either: (i) any Obligor or Subsidiary shall (A) file any petition seeking to take advantage of or commence any Insolvency Proceeding for its own relief, benefit, or advantage; (B) make an offer of settlement, extension, or composition to its unsecured creditors generally; (C) voluntarily dissolve, liquidate, or terminate operations, except as otherwise permitted in this Agreement or the other Loan Documents; (D) admit in writing its inability, or become generally unable, or fail generally, to pay its Debts as such Debts become due; or (E) take any corporate, limited liability company, partnership, or similar action for the purpose of effecting any of the foregoing; or (ii) any trustee or receiver shall be appointed to take possession of any substantial Property of, or to operate any of the business or Properties of, any Obligor or Subsidiary; or

(l) Involuntary Bankruptcy. An Insolvency Proceeding shall be commenced against any Obligor or Subsidiary and either (i) such Obligor or Subsidiary shall consent to the institution of such proceeding, or (ii) such Obligor or Subsidiary shall acquiesce in writing to the commencement of such proceeding or shall fail, in a timely and appropriate manner, to contest vigorously any petition commencing such proceeding, or (iii) any such petition shall not be dismissed within sixty (60) days after the filing thereof, or (iv) an order for relief shall be entered in such proceeding; or

(m) ERISA: (i) An ERISA Event shall occur with respect to any Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect; or (ii) an Obligor or ERISA Affiliate shall fail to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or (iii) any event similar to the foregoing shall occur or exist with respect to a Foreign Plan; or (iv) any Plan or trust created under any Plan of any Obligor or any ERISA Affiliate shall engage in a non-exempt “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) that would subject any Credit Party to any material tax or penalty on “prohibited transactions” imposed by Section 502 of ERISA or Section 4975 of the Code; or (v) there shall be at any time a Lien imposed against the assets of any Obligor or ERISA Affiliate under Code Section 412 or ERISA Sections 302 or 4068; or

(n) Indictment. An Obligor or, if applicable, any of its Responsible Officers is criminally indicted or convicted for either: (i) a felony committed in the conduct of an Obligor’s business, or (ii) violating any state or federal law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and illegal Exportation of War Materials Act) that results in, or would reasonably be expected to lead to, forfeiture of any material portion of the Collateral or any other material Properties of any Obligor; or

(o) Control. A Change of Control shall occur; or

(p) Holdings. Holdings engages in any business or activity that is not permitted by **Section 9.15**.

11.2 Remedies upon Default

(a) Bankruptcy Event of Default. Immediately upon the occurrence of any Bankruptcy Event of Default, all Commitments shall, automatically and without notice to any Person, terminate, and all Obligations (other than Obligations under any Swap Agreements between a Credit Party and Administrative Agent or any Lender (or any of their respective Affiliates), all of which shall be due in accordance with and governed by the provisions of such Swap Agreements) shall, automatically and without notice to any Person, become immediately due and payable, without diligence, presentment, demand, protest, or notice of any kind, all of which are hereby waived by Credit Parties to the fullest extent permitted by Applicable Law, and at or subsequent thereto,

(b) Events of Default Generally. Immediately upon the occurrence of any Event of Default (other than a Bankruptcy Event of Default, to the extent of any rights and remedies set forth in **Section 11.2(a)** attendant thereupon), and during its continuation, Administrative Agent may (and, at the written direction of the Required Lenders, Administrative Agent shall) do one or more of the following at any time and from time to time:

(i) declare any Obligations immediately due and payable (other than Obligations under any Swap Agreements between an Obligor and Administrative Agent or any Lender (or any of their respective Affiliates), all of which shall be due in accordance with and governed by the provisions of such Swap Agreements), whereupon they shall be immediately due and payable without diligence, presentment, demand, protest, or notice of any kind, all of which are hereby waived by all Obligors to the fullest extent permitted by Applicable Law;

(ii) (A) refuse to make Loans, cease the issuance of any Letters of Credit, and refuse to make any other extensions of credit or grant any other financial accommodations to or for the benefit of any Credit Parties; (B) terminate, reduce, or further condition access to any Commitment; (C) without limiting the exercise of any such right existing hereunder prior to any Event of Default occurring, make any adjustment to the Borrowing Base (including by instituting additional Reserves); and (D) without limiting the exercise of any such right existing hereunder prior to any Event of Default occurring, **ON DEMAND**, require Credit Parties to Cash Collateralize LC Obligations, Bank Product Obligations, and other Obligations that are contingent or not yet due and payable (and, if Credit Parties do not, for whatever reason, provide such Cash Collateral **ON DEMAND**, Administrative Agent may provide such Cash Collateral with the proceeds of a Revolving Loan funded by itself and each Lender shall fund its Pro Rata Share thereof in accordance with **Section 4.1**, regardless of whether an Over Advance exists or would result therefrom or any condition precedent to the making of any such Loan has not been satisfied); and

(iii) exercise such other rights and remedies that may be available to it under this Agreement, the other Loan Documents, any agreements relating to Bank Products, or under Applicable Law (including the rights of a secured party under the UCC), all of which shall be cumulative with the rights and remedies elsewhere described in this **Section 11.2** and elsewhere described in this Agreement and in the other Loan Documents.

(c) **Safekeeping.** In respect of its exercise of any rights and remedies regarding any Collateral, whether before or after an Event of Default exists, Administrative Agent shall not be liable or responsible in any way for the safekeeping of any Collateral (other than Collateral in its possession), for any loss or damage thereto, for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whatsoever, and the same shall be at all times at Credit Parties' sole risk.

11.3 License. Each Credit Party hereby grants to Administrative Agent, at such time as Administrative Agent shall be lawfully entitled to exercise such rights and remedies at any time after the occurrence and during the continuance of any Event of Default, an irrevocable and perpetual (subject only to termination upon Payment in Full of the Obligations), non-exclusive, worldwide, royalty-free right and license to use and exercise all other rights under, license, or sublicense (without payment of any royalty or other compensation to such Credit Party or any other Person) any or all of such Credit Party's Intellectual Property and other Proprietary Rights, computing hardware, brochures, promotional and advertising materials, labels, packaging materials, and other Property in connection with the advertising for sale or lease, marketing, selling, leasing, liquidating, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof. Each Credit Party's rights and interests in and to any Intellectual Property shall inure to Administrative Agent's benefit. Nothing contained herein is intended, or shall be construed, to limit the exercise of Administrative Agent's rights and remedies respecting such Intellectual Property and other Properties, to the extent constituting Collateral.

11.4 **Receiver.** In addition to any other right and remedy available to it, Administrative Agent, either on its own motion or upon the request of the Required Lenders, shall have the right, during the existence of an Event of Default, to seek the appointment of a receiver to take possession of and operate and/or dispose of the business and Property of any Credit Party and Subsidiaries, and Credit Parties hereby consent (for themselves and on behalf of the Subsidiaries) to such rights and such appointment and hereby waive any objection Credit Parties may have thereto or their right to have a bond or other security posted by Administrative Agent in connection therewith.

11.5 **Deposits; Insurance.** Without limiting the exercise of any such right existing hereunder prior to any Event of Default occurring, Credit Parties (a) authorize Administrative Agent, during the existence of an Event of Default, to settle, collect, and apply against the Obligations any refund of insurance premiums or any insurance proceeds payable to any Credit Party on account of any Loss or otherwise and (b) irrevocably appoint Administrative Agent during the existence of an Event of Default as their attorney-in-fact to endorse any check or draft or take other action necessary to obtain such funds.

11.6 **Remedies Cumulative.** All rights and remedies of Administrative Agent, LC Issuer, any Lender or any other Secured Party contained in the Loan Documents, the UCC, and under Applicable Law attendant upon the occurrence of any Default or Event of Default are cumulative and not in derogation or substitution of each other. In particular, the foregoing rights and remedies of Administrative Agent and the other Secured Parties may be exercised at any time and from time to time, concurrently or in any order, and shall not be exclusive of any other rights or remedies that Administrative Agent or the other Secured Parties may have, whether under any Loan Document, the UCC, Applicable Law and shall include the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Obligor of this Agreement or any of the other Loan Documents. Administrative Agent and the other Secured Parties may at any time or times, proceed directly against any Obligor to collect the Obligations without prior recourse to any other Obligor the Collateral. All rights and remedies of Administrative Agent and the other Secured Parties shall continue in full force and effect until Payment in Full of all Obligations.

11.7 **Borrowers' Right to Cure.** Notwithstanding anything to the contrary contained in **Section 11.1**, Borrowers may, but shall not be obligated to, cure any potential Event of Default arising from a violation of **Sections 10.1(a) or (b)** (a "**Financial Covenant Default**") upon providing notice of their intent to cure prior to the fifteenth (15th) Business Day after the day on which a Compliance Certificate is required to be delivered in connection with the applicable Fiscal Quarter or Fiscal Year in accordance with **Section 8.6(b)** hereof (such fifteenth (15th) Business Day, the "**Financial Covenant Cure Deadline**") and by causing Parent to issue (or any direct or indirect parent thereof and then contributed to Parent) Equity Interests (other than Disqualified Equity Interests) for cash on or prior to the Financial Covenant Cure Deadline in an aggregate amount equal to an amount that, when added to Consolidated EBITDA on a dollar-for-dollar basis for the relevant Testing Period, would have caused Borrowers to be in full compliance with **Sections 10.1(a) or (b)**, as the case may be, for such Testing Period (a "**Financial Covenant Equity Cure**"); provided that (a) concurrently with the making of such Financial Covenant Equity Cure, Parent receives all of the cash proceeds of such sale of Equity Interests thereof; (b) such Financial Covenant Equity Cure must be effected on or before the Financial Covenant Cure Deadline; (c) no more than two (2) Financial Covenant Equity Cures pursuant to this **Section 11.7** may be made in any Fiscal Year but no Financial Covenant Cures may be made in consecutive Fiscal Quarters; (d) no more than five (5) Financial Covenant Equity Cures pursuant to this **Section 11.7** may be made during the term of this Agreement; (e) the amount of any Financial Covenant Equity Cure pursuant to this **Section 11.7** shall not be greater than the amount required to cause Credit Parties to be in compliance with the Financial Covenants then in effect as set forth in **Section 10.1(a)** and/or **Section 10.1(b)**; (f) all Financial Covenant Equity Cures pursuant to this **Section 11.7** shall be included solely for the purposes of determining compliance with the Financial Covenants then in effect (for the period for which such Financial Covenant Equity Cure is made and any Testing Period which includes such period for which such Financial Covenant Equity Cure is made) as set forth in **Sections 10.1(a) and (b)** and shall not be included for any other purpose, including but not limited to determining basket levels, pricing, Liquidity or Average Liquidity and other items governed by reference to Consolidated EBITDA or Liquidity, as applicable; and (g) no proceeds of any Financial Covenant Equity Cure shall be required to be used to pay down the Revolving Loans (but such proceeds shall not be used for any purpose prohibited by this Agreement). Until the Financial Covenant Cure Deadline, neither Administrative Agent nor any Lender shall exercise any remedies, or take any actions, against any Credit Party or any of its Subsidiaries or their respective assets or property as a result of any Event of Default arising solely due to the breach of the Financial Covenants then in effect as set forth in **Section 10.1(a) and (b)** (or any failure to give timely notice of such Event of Default. Upon the satisfaction of **Sections 11.7(a)-(f)** above, (x) the Financial Covenants then in effect as set forth in **Sections 10.1(a) and (b)** shall be recalculated giving effect to the proceeds of the Financial Covenant Equity Cure and, if after giving effect to the foregoing recalculations, Borrowers shall then be in compliance with the requirements of **Sections 10.1(a) and (b)**, as applicable, Borrowers shall be deemed to have satisfied the requirements of **Sections 10.1(a) and (b)**, as applicable, with the same effect as though there had been no failure to comply therewith, and the Financial Covenant Default that occurred shall be deemed not to have occurred for purposes of this Agreement and the other Loan Documents and (y) the amount of the Financial Covenant Equity Cure shall be included in the calculation of Consolidated EBITDA solely for the purposes of determining compliance with the Financial Covenants then in effect as set forth in **Sections 10.1(a) and (b)** at the end of the applicable Testing Period and any subsequent periods that include such Fiscal Quarter, and all repayments of Indebtedness with the proceeds of such Finance Covenants Equity Cure shall be disregarded except during future periods that do not include such Fiscal Quarter. Following a Financial Covenant Default, none of Administrative Agent, LC Issuer, nor any Lender shall be required to fund any requested Loan, issue any Letter of Credit, or otherwise make any extension of credit or financial accommodation to or for the benefit or account of any Borrower hereunder until the date that the applicable Financial Covenant Default has been cured pursuant to the foregoing **Section 11.7**.

SECTION 12

ADMINISTRATIVE AGENT

12.1 **Appointment, Authority, and Duties of Administrative Agent; Professionals.**

(a) Appointment and Authority. Each Lender, LC Issuer and other Secured Party hereby irrevocably appoints PNC to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to (i) take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are incidental thereto and (ii) enter into all Loan Documents to which Administrative Agent is intended to be a party and accept all Security Documents for Administrative Agent's benefit and the Pro Rata benefit of the Lenders, all of which shall be binding upon the Secured Parties. Without limiting the generality of the foregoing, Administrative Agent shall have the sole and exclusive authority to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents; (ii) execute and deliver as Administrative Agent each Loan Document, including any Intercreditor Agreement or Subordination Agreement, and accept delivery of each Loan Document from any Obligor or other Person; (iii) act as collateral agent for the Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (iv) manage, supervise, or otherwise deal with Collateral; and (v) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law, or otherwise. Subject to **Section 15.2(a)(v)**, Administrative Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts or Eligible Inventory or whether to impose or release any Reserve, which determinations and judgments, if exercised in Good Faith, shall exonerate Administrative Agent from liability to any LC Issuer, Lender or other Secured Party or other Person for any error in judgment. It is understood and agreed that the use of the term "agent" (or any other similar nomenclature) herein or in any other Loan Documents with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Duties; Delegation. The duties of Administrative Agent shall be ministerial and administrative in nature, and Administrative Agent shall not have any duties or obligations except those expressly set forth in this Agreement or the other Loan Documents. Administrative Agent shall not have a fiduciary relationship with any Lender, LC Issuer, Secured Party, Participant or other Person, whether by reason of this Agreement or any other Loan Document or any transaction relating hereto or thereto or otherwise, and regardless whether a Default or Event of Default exists. The conferral upon Administrative Agent of any right shall not imply a duty on Administrative Agent's part to exercise such right, unless instructed to do so by Required Lenders in accordance with and pursuant to this Agreement or any other Loan Document. Administrative Agent may perform its duties through agents, employees and other Related Parties and may consult with and employ Administrative Agent Professionals and shall be entitled to act upon (or refrain from acting upon), and shall be fully protected in any action taken (or omitted to be taken) in Good Faith reliance upon, any advice given by any Administrative Agent Professional. Administrative Agent shall not be responsible for the negligence or misconduct of any agents, employees, other Related Parties or Administrative Agent Professionals selected by it in Good Faith. Except as otherwise may be expressly set forth herein or in any of the other Loan Documents, Administrative Agent shall not have any duty to disclose, and shall not be liable for any failure to disclose, any information relating to any Credit Party or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its agents, employees, other Related Parties or Administrative Agent Professionals in any capacity.

(c) Instructions of Required Lenders. The rights and remedies conferred upon Administrative Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Administrative Agent may request instructions from Required Lenders with respect to any act (including the failure to act) in connection with this Agreement or any other Loan Document and may seek assurances to its satisfaction from Lenders of their indemnification obligations under **Section 12.5** against all Claims that could be incurred by Administrative Agent in connection with any act (or failure to act). Administrative Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and Administrative Agent shall not incur liability to any Person by reason of so refraining. Instructions of the Required Lenders shall be binding upon all Lenders, and no Lender or any other Person shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent's acting or refraining from acting in accordance with the instructions of the Required Lenders. Notwithstanding the foregoing, instructions by and consent of all Lenders (except any Defaulting Lender) shall be required in the circumstances described in **Section 15.2(a)(iv)**. The Required Lenders, without the prior written consent of each Lender, may not direct Administrative Agent to accelerate and demand payment of Loans held by one Lender without accelerating and demanding payment of all other Loans or terminate the Commitments of one Lender without terminating the Commitments of all Lenders. Administrative Agent shall not be required to take any action that, in its opinion, or in the opinion of its legal counsel, is contrary to Applicable Law or any Loan Document or could subject any Administrative Agent Indemnitee to liability, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of Property of a Defaulting Lender in violation of any Debtor Relief Law.

(d) Legal Representation of Administrative Agent. In connection with the negotiation, drafting and execution of this Agreement and the other Loan Documents, or in connection with future legal representation relating to any amendments, waivers, consents or other modifications to this Agreement or any other Loan Documents, or the administration or enforcement hereof or thereof, Blank Rome LLP has represented, and such law firm (or its successors serving in such capacity) shall represent, only PNC, in its capacity as Administrative Agent and a Lender or other Secured Party, and not any other Lender or other Secured Party.

12.2 Guarantors and Collateral; Intercreditor Agreements; and Field Examination Reports.

(a) Lien Releases; Release of Guarantors; Care of Collateral. Each Secured Party authorizes Administrative Agent, and Administrative Agent agrees, to (i) release any Lien with respect to any Collateral (A) upon Payment in Full of the Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Bank Product Obligations (other than Excluded Bank Product Obligations) that have been Cash Collateralized) or (B) that is the subject of an Asset Disposition that Borrower Representative certifies in writing to Administrative Agent is a Permitted Asset Disposition (and Administrative Agent may rely conclusively on any such certificate without further inquiry), (ii) subordinate its Liens in any Collateral in favor of any other Lien if Borrower Representative certifies that such other Lien is a Permitted Lien entitled to priority over Administrative Agent's Liens (and Administrative Agent may rely conclusively on any such certificate without further inquiry) and (iii) release any Guarantor from its obligations under this Agreement and the other Loan Documents if such Person ceases to be a Guarantor as a result of such Person becoming an Immaterial Subsidiary in a transaction permitted hereunder or thereunder. Administrative Agent shall have no obligation whatsoever to any Lenders to assure that any Collateral exists or is owned by an Obligor or any other Person, or is cared for, protected, insured or encumbered, nor to assure that Administrative Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral. Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of Property, or to release any Guarantor from its obligations under this Agreement or any other Loan Document pursuant to this **Section 12.2(a).**

(b) Possession of Collateral. Administrative Agent and the Lenders appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or under Article 9 Control of such Lender, to the extent such Liens are perfected by possession or Article 9 Control. If any Lender obtains possession or Article 9 Control of any Collateral, it shall notify Administrative Agent thereof and, promptly upon Administrative Agent's request (but, in any case, within five (5) Business Days) deliver such Collateral to Administrative Agent or otherwise deal with such Collateral in accordance with Administrative Agent's instructions.

(c) Reports. Upon any such Person's request therefor, Administrative Agent shall promptly forward to LC Issuer and each Lender, when complete, copies of any field audit, field examination, or appraisal report prepared by or for Administrative Agent with respect to any Credit Party or Subsidiary or any Collateral (each, a "Report"). LC Issuer and each Lender agrees (i) that neither PNC nor Administrative Agent makes any representation or warranty as to the accuracy or completeness of any Report and shall not be liable for any information contained in or omitted from any Report; (ii) that the Reports are not intended to be comprehensive audits or examinations of any Person, thing, or matter and that Administrative Agent or any other Person performing any such audit, examination, or appraisal will inspect only specific information regarding the subject matter thereof and will rely significantly upon the books and records, as well as upon representations of, the Persons (and their officers and employees) subject to such audit, examination, or appraisal; and (iii) to keep all Reports confidential in accordance with **Section 15.14** and, without limitation thereof, not to distribute any Report (or the contents thereof) to any Person except to such Person's Affiliates, Participants, partners, directors, officers, employees, agents, trustees, administrators, managers, attorneys, accountants, consultants, advisors and representatives of such Person and of such Person's Affiliates, or use any Report in any manner other than administration of the Loans and other Obligations. Each of LC Issuer and each of the Lenders agrees to indemnify, defend and hold harmless Administrative Agent and any other Person preparing a Report (excepting therefrom any Obligor) from any action that LC Issuer or such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any Claims arising in connection with any third parties that obtain any information contained in a Report through LC Issuer or such Lender.

(d) Rights of Individual Secured Parties. Anything contained in any of the Loan Documents to the contrary notwithstanding, each of the Credit Parties, Administrative Agent and each other Secured Party hereby acknowledge and agree that (i) no Secured Party except Administrative Agent shall have any power, right or remedy hereunder individually to realize upon any of the Collateral or to enforce this Agreement or any other Loan Document, it being understood and agreed that all such powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and thereof, and (ii) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, Administrative Agent or any other Secured Party may be the purchaser of any or all of such Collateral at any such sale or other disposition and Administrative Agent, as agent for and representative of the Secured Parties (but not any of the other Secured Parties in their respective individual capacities) 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 at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale or other disposition.

(e) Intercreditor Agreements. Administrative Agent is hereby authorized and directed by each of the Lenders, LC Issuer and each of the Secured Parties to, to the extent required or permitted by the terms of the Loan Documents, to enter into the Intercreditor Agreement and make or consent to any filings or take any other actions in connection therewith, and each of said Persons acknowledges and agrees that the Intercreditor Agreement and any consent, filing or other action will be binding upon it. Each of the Lenders, LC Issuer and each of the Secured Parties hereby (i) acknowledges that it has received a copy of the Intercreditor Agreement, (ii) consents to any subordination of Liens provided for in the Intercreditor Agreement, (iii) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (iv) authorizes and instructs Administrative Agent to enter into the Intercreditor Agreement, and to subject the Liens on the Collateral securing the Obligations to the provisions thereof. Notwithstanding anything herein to the contrary, the Liens and security interests granted in the Security Documents to Administrative Agent by the Credit Parties pursuant to this Agreement on and in any Collateral and the exercise of any right or remedy by Administrative Agent or any Lender with respect to any such Collateral hereunder, are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement, the terms of the Intercreditor Agreement shall govern and control.

12.3 **Reliance By Administrative Agent.** Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, or other writing (including any electronic message, facsimile, Internet or intranet website posting, or other distribution), or any statement made to it (orally or otherwise) that is believed by it to be genuine and to have been made, signed, sent, or otherwise authenticated, as applicable, by the proper Person. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or LC Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or LC Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or LC Issuer in accordance with **Section 15.1** before the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for Borrowers), independent accountants and other Administrative Agent Professionals selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

12.4 **Action Upon Default.** Administrative Agent shall be entitled to assume that no Default or Event of Default has occurred and is continuing and shall not be deemed to have knowledge of any Default or Event of Default unless, in its capacity as a Lender it has actual knowledge thereof, or it has received written notice from any other Lender or any Credit Party specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify Administrative Agent and the other Lenders thereof in writing specifying in detail the nature thereof. Each Lender agrees that, except as otherwise provided in any Loan Documents or with the written consent of Administrative Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations under any Loan Documents, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales, or other similar dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Borrower where a deadline or limitation period is applicable that would, absent such action, bar enforcement of Obligations held by such Lender, including the filing of proofs of claim in an Insolvency Proceeding.

12.5 **Indemnification of Administrative Agent Indemnitees.** EACH SECURED PARTY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS ADMINISTRATIVE AGENT INDEMNITEES (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ANY OTHERWISE INDEMNIFIED MATTER ARISING FROM ADMINISTRATIVE AGENT'S NEGLIGENCE OR STRICT LIABILITY BUT NOT ADMINISTRATIVE AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT), TO THE EXTENT NOT REIMBURSED BY OBLIGORS (BUT WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS OF OBLIGORS UNDER ANY LOAN DOCUMENTS), ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY ADMINISTRATIVE AGENT INDEMNITEE, PROVIDED THAT SUCH CLAIM RELATES TO OR ARISES FROM AN ADMINISTRATIVE AGENT INDEMNITEE'S ACTING AS OR FOR ADMINISTRATIVE AGENT (IN ITS CAPACITY AS ADMINISTRATIVE AGENT). In Administrative Agent's discretion, it may reserve for any such Claims made against an Administrative Agent Indemnitee and may satisfy any judgment, order, or settlement relating thereto, from proceeds of Collateral before making any distribution of Collateral proceeds to any other Secured Parties. If Administrative Agent is sued by any receiver, bankruptcy trustee, debtor-in-possession, or other Person for any alleged preference or fraudulent transfer, then any monies paid by Administrative Agent in settlement or satisfaction of such proceeding, together with all interest, costs, and expenses (including attorneys' fees) incurred in the defense of same, shall be reimbursed to Administrative Agent by each Lender to the extent of its Pro Rata Share. All payment obligations under this **Section 12.5** shall be due and payable **ON DEMAND**, together with interest thereon, computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full.

12.6 Limitation on Responsibilities of Administrative Agent. Administrative Agent shall not be liable for any action taken or not taken by it under any Loan Document (a) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in Good Faith shall be necessary, under the circumstances as provided in **Section 15.2**) or (b) in the absence of its own gross negligence, bad faith or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment binding on Administrative Agent. Administrative Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor or any Secured Party of any obligations under the Loan Documents. Administrative Agent does not make to Lenders any express or implied warranty, representation, or Guarantee with respect to any Obligations, Collateral, Loan Documents, or Borrower. No Administrative Agent Indemnitee shall be responsible to any Secured Party for (a) any recitals, statements, information, representations, or warranties contained in any Loan Documents; (b) the execution, validity, genuineness, effectiveness, or enforceability of any Loan Documents; (c) the genuineness, enforceability, collectibility, value, sufficiency, location, or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; (d) the validity, enforceability or collectibility of any Obligations; or (e) the assets, liabilities, financial position, results of operations, business, creditworthiness, or legal status of any Credit Party or Account Debtor. No Administrative Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document, or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in **Section 6** or elsewhere herein or in any other Loan Document. Administrative Agent shall have no liability with respect to the administration, submission or any other matter related to the rates in the definition of Term SOFR Rate or with respect to any comparable or successor rate thereto.

12.7 Resignation; Successor Administrative Agent. Subject to the appointment and acceptance of a successor Administrative Agent as provided below, Administrative Agent may resign at any time by giving at least thirty (30) days prior written notice thereof to Lenders and Borrower Representative (provided that no notice to or approval of Lenders or Borrowers shall be required (i) in any case where the successor Administrative Agent is one of the Lenders or (ii) after the occurrence and during the continuance of a Specified Event of Default). Upon receipt of such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent that must be either (i) a Lender or an Affiliate of a Lender (in each case excluding Defaulting Lenders) or (ii) if no Lender or such Affiliate of a Lender willing to accept such appointment, then, a commercial bank that is organized under the laws of the United States or any state or district thereof, or an Affiliate of such bank, and (provided no Specified Event of Default exists) is reasonably acceptable to Borrowers. If no successor agent is appointed before the effective date of the resignation of Administrative Agent, then Administrative Agent may appoint a successor agent meeting the qualifications set forth above, provided that if Administrative Agent shall notify Borrowers and Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral security held by Administrative Agent on behalf of the Lenders or LC Issuer under any of the Loan Documents the retiring Administrative Agent shall continue to hold such Collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications, and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender and LC Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this **Section 12.7**. Upon acceptance by a successor Administrative Agent of an appointment to serve as Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent without further act, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this **Section 12.7**) but shall continue to have the benefits of the indemnification set forth in **Sections 12.5, 15.3, and 15.4**. Notwithstanding any Administrative Agent's resignation, the provisions of this **Section 12.7** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Administrative Agent. Any successor to PNC by merger or acquisition of Equity Interests or its Loans hereunder shall continue to be Administrative Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above. In addition to the foregoing, and notwithstanding anything to the contrary contained herein, if the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law by notice in writing to Borrower Representative and such Person remove such Person as Administrative Agent and, with consent of Borrowers (provided no Specified Event of Default exists), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders (the "**Removal Effective Date**")), then, such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date and the Required Lenders instituting such removal shall continue thereafter as co-Administrative Agents unless and until a successor Administrative Agent is appointed and accepts such appointment.

12.8 **Separate Collateral Agent.** It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If Administrative Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, Administrative Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If Administrative Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to Administrative Agent under the Loan Documents shall also be vested in such separate agent. Every covenant and obligation necessary to the exercise thereof by such agent shall run to and be enforceable by it as well as Administrative Agent. Lenders shall execute and deliver such documents as Administrative Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign, or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Administrative Agent until appointment of a new agent.

12.9 **Due Diligence and Non-Reliance.** Each Secured Party acknowledges and agrees that it has, independently and without reliance upon Administrative Agent or any other Secured Party, or any of their respective Related Parties, and based upon such documents, information, and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans, issue Letters of Credit, participate in LC Obligations hereunder, make or participate in other credit extensions to Obligors hereunder and grant other financial accommodations to or on behalf of any Obligor pursuant hereto. Each Secured Party has made such inquiries concerning the Loan Documents, the Collateral and each Obligor as such Lender believes necessary. Each Secured Party further acknowledges and agrees that the other Secured Parties, including Administrative Agent, or any of their respective Related Parties, have made no representations or warranties concerning any Obligor or Subsidiary, any Collateral, or the legality, validity, sufficiency, or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon the other Secured Parties, including Administrative Agent and or any of their respective Related Parties, and based upon such financial statements, documents, and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans, issuing Letters of Credit, participating in LC Obligations, making or participating in other credit extensions to Obligors and granting other financial accommodations to or on behalf of any Obligor and in taking or refraining from any action under any Loan Documents. Except as expressly required hereby and except for notices, reports, and other information expressly requested by a LC Issuer or any Lender, Administrative Agent shall have no duty or responsibility to provide LC Issuer, any Lender or any other Secured Party with any notices, reports, or certificates furnished to Administrative Agent by any Obligor or Subsidiary or any credit or other information concerning the affairs, financial position, business, or Properties of any Obligor or Subsidiary that may come into possession of Administrative Agent or any of its Affiliates.

12.10 Remittance of Payments.

(a) Remittances Generally. All payments by any Lender to Administrative Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Administrative Agent and request for payment is made by Administrative Agent by 11:00 a.m. on a Business Day, payment shall be made by such Lender not later than 2:00 p.m. on such day, and if request is made after 11:00 a.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Administrative Agent to any Lender shall be made by wire transfer, in the type of funds received by Administrative Agent. Any such payment shall be subject to Administrative Agent's right of offset for any amounts due from such Lender under the Loan Documents. From and after the due date for payment by Lenders, such payment shall bear interest computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full.

(b) Failure to Pay. If any Lender fails to pay any amount when due by it to Administrative Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by Administrative Agent as customary in the banking industry for interbank compensation. In no event shall Borrowers be entitled to receive credit for any interest paid by a Lender to Administrative Agent.

(c) Recovery of Payments. If Administrative Agent pays any amount to a Secured Party in the expectation that a related payment will be received by Administrative Agent from an Obligor and such related payment is not received, then Administrative Agent may recover such amount from each Secured Party that received it. If Administrative Agent determines at any time that an amount received under any Loan Document must be returned to an Obligor or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Administrative Agent shall not be required to distribute such amount to any Secured Party. If any amounts received and applied by Administrative Agent to any Obligations are later required to be returned by Administrative Agent pursuant to Applicable Law, each Lender shall pay to Administrative Agent, **ON DEMAND**, such Lender's Pro Rata Share of the amounts required to be returned in accordance with **Section 4.1**, together with interest thereon, computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full.

(d) Payments Made in Error.

(i) If Administrative Agent (x) notifies a Lender, LC Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, LC Issuer or Secured Party (any such Lender, LC Issuer, Secured Party or other recipient (and each of their respective successors and assigns), a “**Payment Recipient**”) that Administrative Agent has determined in its discretion (whether or not after receipt of any notice under immediately succeeding clause (ii)) that any funds (as set forth in such notice from Administrative Agent) received by such Payment Recipient from Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, LC Issuer, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of Administrative Agent pending its return or repayment as contemplated below in this **Section 12.10(d)** and held in trust for the benefit of Administrative Agent, and such Lender, LC Issuer or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as Administrative Agent may, in its discretion, specify in writing), return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with then standard banking industry rules on interbank compensation from time to time in effect. A notice of Administrative Agent to any Payment Recipient under this clause (i) shall be conclusive, absent manifest error.

(ii) Without limiting the immediately preceding clause (i), each Lender, LC Issuer, Secured Party or any Person who has received funds on behalf of a Lender, LC Issuer or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates), or (z) that such Lender, LC Issuer or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then, in each such case:

(A) it acknowledges and agrees that (1) in the case of clauses (x) and (y) of this **Section 12.10(d)(ii)**, an error and mistake shall be presumed to have been made (absent written confirmation from Administrative Agent to the contrary) or (2) an error and mistake has been made (in the case of clause (z) of this **Section 12.10(d)(ii)**), in each case, with respect to such payment, prepayment or repayment; and

(B) such Lender, LC Issuer or Secured Party shall use commercially reasonable efforts to (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in clauses (x), (y) and (z) of this **Section 12.10(d)(ii)**) notify Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying Administrative Agent pursuant to this **Section 12.10(d)**. For the avoidance of doubt, the failure to deliver a notice to Administrative Agent pursuant hereto shall not have any effect on a Payment Recipient’s obligations pursuant hereto or on whether or not an Erroneous Payment has been made.

(iii) Each Lender, LC Issuer or Secured Party hereby authorizes Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, LC Issuer or Secured Party under any Loan Document, or otherwise payable or distributable by Administrative Agent to such Lender, LC Issuer or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that Administrative Agent has demanded to be returned under immediately preceding clause (i).

(iv) (A) In the event that an Erroneous Payment (or portion thereof) is not recovered by Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (i), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon Administrative Agent’s notice to such Lender at any time, then, effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as Administrative Agent in its discretion may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by Administrative Agent in such instance)), and is hereby (together with Borrowers) deemed to execute and deliver an Assignment Agreement (or, to the extent applicable, an agreement incorporating an Assignment Agreement by reference pursuant to an MarkitClear or another electronic platform as to which Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to Borrowers or Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) Administrative Agent and Borrowers shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(B) Subject to **Section 13.1** (including, subject in all events, to any assignment consent or approval requirements (including from Borrowers or otherwise)), Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by Administrative Agent) and (y) may, in the sole discretion of Administrative Agent, be reduced by any amount specified by Administrative Agent in writing to the applicable Lender from time to time.

(v) The parties hereto agree that (x) irrespective of whether Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, LC Issuer or Secured Party, to the rights and interests of such Lender, LC Issuer or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the “**Erroneous Payment Subrogation Rights**”) (provided that the Credit Parties’ Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by Borrowers or any other Credit Party; provided that this **Section 12.10(d)** shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of Borrowers relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding sub-clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Administrative Agent from or on behalf of Borrowers for the purpose of making such Erroneous Payment.

(vi) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(vii) Each party’s obligations, agreements and waivers under this **Section 12.10(d)** shall survive the resignation or replacement of Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or LC Issuer the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

12.11 **Administrative Agent in its Individual Capacity.** As a Lender, Administrative Agent shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders," or any similar term, as and when used herein or in any other Loan Document, unless otherwise expressly provided, shall include Administrative Agent in its capacity as a Lender. Each of Administrative Agent and its Affiliates may accept deposits from, maintain deposits or credit balances for, invest in, lend money to, be a Bank Product Provider to, act as trustee under indentures of, serve as financial or other advisor to, and generally engage in any kind of business with, Borrowers and their Affiliates, as if Administrative Agent were any other bank, without any duty to account therefor (including any fees or other consideration received in connection therewith) to the other Lenders. In their individual capacity, Administrative Agent and its Affiliates may receive information regarding Borrowers, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Lender agrees that Administrative Agent and its Affiliates shall be under no obligation to provide such information to Lenders if acquired in such individual capacity and not as Administrative Agent hereunder.

12.12 **[Reserved].**

12.13 **Bank Product Providers**

. Notwithstanding any term of this Agreement or any other Loan Document to the contrary, Bank Product Obligations owed to any Lender (other than any owed to PNC and its Affiliates) shall be excluded from the benefits of clauses seventh and eighth of **Section 5.5(a)** unless such Lender, in its capacity as a Bank Product Provider, has delivered to Administrative Agent a Secured Party Designation Notice in respect thereof; provided, that each holder of Bank Product Obligations not party to this Agreement as a Lender (other than any Affiliate of PNC) shall be excluded from all benefits of this Agreement and the other Loan Documents, including **Section 5.5(a)**, unless such Bank Product Provider has delivered to Administrative Agent a Secured Party Designation Notice in regard thereto; provided, further, that, unless otherwise approved by Administrative Agent, no Secured Party Designation Notice may be delivered by any Lender or other Person (other than an Affiliate of PNC) to Administrative Agent if an Event of Default then exists. Each Bank Product Provider not a party to this Agreement as a Lender (other than any Affiliate of PNC), by its delivery of any such Secured Party Designation Notice, shall be deemed to have agreed to be bound by this Agreement and the other Loan Documents in relation to its Bank Products identified in such notice, to have agreed to perform in accordance with its terms all the obligations that by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Bank Product Provider, and to have appointed and authorized Administrative Agent to act as its agent in connection therewith to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant thereto as are delegated to Administrative Agent by the terms thereof, together with such powers as are incidental thereto. Each holder of Bank Product Obligations (including any not otherwise a party hereto) shall indemnify, defend and hold harmless Administrative Agent Indemnitees, to the extent not reimbursed by Credit Parties, against all Claims that may be incurred by or asserted against any Administrative Agent Indemnitee in connection with the Bank Product Obligations of such Bank Product Provider. Anything contained in this Agreement or any of the other Loan Documents to the contrary notwithstanding, no Bank Product Provider, in its capacity as such, will create (or be deemed to have created) in its favor any rights in connection with the management or release of any Collateral or of the Obligations of any Borrower or any other Credit Party under the Loan Documents except as otherwise may be expressly provided herein or in the other Loan Documents. Furthermore, it is understood and agreed that each Bank Product Provider, in its capacity as such, shall not have any right to notice of any action or to consent to, direct or object to any action hereunder or under any of the other Loan Documents or otherwise in respect of the Collateral (including the release or impairment of any Collateral, or to any notice of or consent to any amendment, waiver or modification of the provisions hereof or of the other Loan Documents), other than in its capacity (if any) as a Lender and, in any event, only as expressly provided herein or therein.

12.14 **No Third Party Beneficiaries** Other than as set forth in **Section 12.2, 12.7 and 12.10(d)**, this **Section 12** is an agreement solely among Administrative Agent, LC Issuer, Lenders and the other Secured Parties and shall survive Payment in Full of the Obligations. Other than as set forth in **Section 12.2, 12.7 and 12.10(d)**, this **Section 12** does not confer any rights or benefits upon Credit Parties, any Obligor or any other Person, and no Credit Party, Obligor or other Person shall have any standing to enforce this **Section 12**. As between Credit Parties and Administrative Agent, any action that Administrative Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by LC Issuer, the Lenders and the other Secured Parties, as applicable.

12.15 Certifications From Lenders and Participants; PATRIOT Act; No Reliance.

(a) **PATRIOT Act Certifications** . Each Lender or assignee or Participant of a Lender that is not incorporated under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to Administrative Agent the certification, or, if applicable, recertification, certifying that such Lender, assignee or Participant is not a “shell” and certifying to other matters as required by Section 313 of the PATRIOT Act and the applicable regulations: (1) within ten (10) days prior to the Closing Date, and (2) as such other times as are required under the PATRIOT Act.

(b) **No Reliance** . Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, Participants or assignees, may rely on Administrative Agent to carry out such Lender’s, Affiliate’s, Participant’s or assignee’s customer identification program, or other obligations required or imposed under or pursuant to the PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 1020.220 (as hereafter amended or replaced, the “CIP Regulations”), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of the Credit Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such other Anti-Terrorism Laws.

12.16 Bankruptcy.

(a) **Proofs of Claim**. In case of the pendency of any Insolvency Proceeding relative to any Credit Party, Administrative Agent (irrespective of whether the principal of any Loan or LC Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on any Borrower) shall be entitled and empowered (but not obligated) by intervention in such Insolvency Proceeding or otherwise: (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, LC Issuer and Administrative Agent (including any claim for compensation, expenses, disbursements and advances of Lenders, LC Issuer and Administrative Agent and their respective agents and counsel and all other amounts due Lenders, LC Issuer and Administrative Agent arising hereunder) allowed in such Insolvency Proceeding; and (ii) to collect and receive any monies or other Property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, or other similar official in any such judicial proceeding is hereby authorized by each Lender and LC Issuer to make such payments directly to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders and/or LC Issuer, to pay to Administrative Agent any amount due for the compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent hereunder.

(b) Credit Bids. The holders of the Obligations hereby irrevocably authorize Administrative Agent, acting at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of all or some of the Obligations pursuant to a deed in lieu of foreclosure, strict foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including Sections 363, 1123 or 1129 thereof, or any similar Applicable Law in any other jurisdictions to which a Credit Party is subject, or (b) at any sale or foreclosure or acceptance of collateral in lieu of Debt conducted by (or with the consent of, or at the direction of) Administrative Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the holders thereof shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or Debt instruments of the acquisition vehicle(s) used to consummate such purchase). In connection with any such credit bid (i) Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle(s) (provided that any actions by Administrative Agent with respect to such acquisition vehicle(s), including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and (ii) to the extent that any Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (whether as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Debt that is credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the holders of the Obligations pro rata and the Equity Interests or Debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled without the need for any Lender or any acquisition vehicle to take any further action.

SECTION 13

ASSIGNMENTS AND PARTICIPATIONS

13.1 Successors and Assigns.

(a) Binding Effect. Subject to **Section 6.1**, this Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto as of the Closing Date. Thereupon, the provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that neither any Borrower nor any other Credit Party (other than resulting from a merger of a Credit Party with and into another Credit Party that is otherwise permitted under this Agreement) may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Documents except (i) to an assignee in accordance with the provisions of **Section 13.1(b)**, (ii) by way of participation in accordance with the provisions of **Section 13.1(d)** or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 13.1(e)**; and any other attempted assignment or transfer by any party hereto shall be null and void *ab initio*. Nothing in this Agreement or any other Loan Document, whether expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 13.1(d)** and, to the extent expressly contemplated hereby, the Indemnitees and any other express third party beneficiaries) any legal or equitable right, remedy or claim under or by reason of this Agreement or any other Loan Document.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Loans and obligations hereunder at the time owing to it) and the other Loan Documents; provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it (in each case with respect to any credit facility) or contemporaneous assignments to Approved Funds that equal at least the amounts specified in **Section 13.1(b)(i)(B)** in the aggregate), or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, or if PNC is the assignor, no minimum amount need be assigned; and

(B) in any event not described in **Section 13.1(b)(i)(A)**, the aggregate amount of the Commitments (which for this purpose includes Loans and Obligations in respect thereof outstanding thereunder) or, if any of the Commitments are not then in effect, the principal outstanding balance of the Loans and other Obligations of the assigning Lender subject to each such assignment (determined as of the date the Assignment Agreement with respect to such assignment is delivered to Administrative Agent or, if a "Trade Date" is specified in the Assignment Agreement, as of the Trade Date) shall not be less than \$2,000,000, in the case of any assignment in respect of any Revolving Commitments and/or Revolving Loans, unless each of Administrative Agent and, so long as no Specified Event of Default shall have occurred and is continuing, Borrower Representative otherwise consents (with any such consent of Borrower Representative not to be unreasonably withheld, conditioned or delayed).

(i i) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Commitments and Loans assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by **Section 13.1(b)(i)(B)** and, in addition thereto:

(A) the consent of Borrower Representative (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) a Specified Event of Default shall have occurred and is continuing at the time of such assignment or (y) such assignment is made by PNC or is made by any Lender other than PNC to any other Lender, or to an Affiliate of a Lender or to an Approved Fund with respect to a Lender; provided that Borrower Representative shall be deemed to have consented to any such assignment requiring its consent unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after having received written notice thereof;

(B) the consent of Administrative Agent shall be required unless such assignment is made by PNC or is made by any Lender other than PNC to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the LC Issuer shall be required for any assignment in respect of the assignment of any Revolving Commitment; and

(D) the consent of the Swing Line Lender shall be required for any assignment in respect of the assignment of any Revolving Commitment.

(i v) Assignment Agreement. The parties to each assignment shall execute and deliver to Administrative Agent an Assignment Agreement, together with a processing and recordation fee in an amount determined by Administrative Agent, unless waived, in whole or in part by Administrative Agent in its discretion. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Questionnaire and any applicable tax forms as required under **Section 14.3(g)**.

(v) No Assignment to Certain Persons. No such assignment shall be made by any Lender to (A) any Borrower or other Credit Party or any of a Borrower's or a Credit Party's Affiliates or Subsidiaries or (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this **Section 13.1(b)(v)**.

(vi) No Assignment to Natural Persons. No such assignment shall be made by any Lender to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (that may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of Borrower Representative and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent, each LC Issuer, each Swing Line Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Revolving Commitment. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this **Section 13.1**, then, the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs. In addition to the foregoing, an assignment fee in the minimum amount of \$3,500 shall be payable by any assigning Lender to Administrative Agent with respect to each assignment, unless waived by Administrative Agent in its sole discretion.

Subject to acceptance and recording thereof by Administrative Agent pursuant to **Section 13.1(c)**, from and after the effective date specified in each Assignment Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment Agreement, be released from its obligations (other than its confidentiality obligations) under this Agreement (and, in the case of an Assignment Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Section 14.2**, **Section 14.3** and **Section 15.3** with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Borrowers will execute and deliver on request, at their own expense, Notes to the assignee evidencing the interests taken by way of assignment hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 13.1(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 13.1(d)**.

(c) Register. Administrative Agent, acting solely for this purpose as an agent of Borrowers, shall maintain at one of its offices in the United States, a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrowers, Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement and the other Loan Documents. The Register shall be available for inspection by Borrower Representative and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Administrative Agent, sell participations to any Person (other than a natural Person or a Borrower or other Credit Party or any of a Borrower's or other Credit Party's Affiliates or Subsidiaries) (subject to the foregoing prohibitions, 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 its Commitments and/or the Loans owing to it); provided that, notwithstanding the sale of such participation, (i) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) Borrowers, Administrative Agent, the LC Issuer and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 15.3** with respect to any payments made by such Lender to its Participant(s). 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; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in **Sections 14.2(a)(iii)** and **14.2(a)(iv)** of that affects such Participant. Borrowers agree that each Participant shall be entitled to the benefits of **Sections 14.1**, **14.2** and **14.3** (subject to the requirements and limitations therein, including the requirements under **Section 14.3** (it being understood that the documentation required under **Section 14.3** 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 13.1(b)**; provided that such Participant (A) agrees to be subject to the provisions of **Section 14.4** as if it were an assignee under **Section 13.1(b)**; and (B) shall not be entitled to receive any greater payment under **Sections 14.2** or **14.3**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation pursuant hereto agrees, at Borrowers' request and expense, to use reasonable efforts to cooperate with Borrowers to effectuate the provisions of **Section 14.4** with respect to any Participant. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of **Section 15.6** as though it were a Lender; provided that such Participant agrees to be subject to **Section 5.6** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(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, or any promissory notes evidencing its interests hereunder, to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 14

YIELD PROTECTION

14.1 Alternate Rate of Interest

- (a) Interest Rate Inadequate or Unfair. In the event that Administrative Agent or any Lender shall have reasonably determined that:
- (i) reasonable means do not exist for ascertaining the Term SOFR Rate for any Interest Period;
 - (ii) Dollar deposits in the relevant amount and for the relevant maturity are not available, with respect to an outstanding Term SOFR Rate Loan, a proposed Term SOFR Rate Loan, or a proposed conversion of a Base Rate Loan into a Term SOFR Rate Loan;
 - (iii) the making, maintenance or funding of any Term SOFR Rate Loan has been made impracticable or unlawful by compliance by Administrative Agent or such Lender in good faith with any Applicable Law or any interpretation or application thereof by any Relevant Governmental Body or with any request or directive of any such Relevant Governmental Body (whether or not having the force of law), or

(iv) the Term SOFR Rate will not adequately and fairly reflect the cost to such Lender of the funding, establishment, or maintenance of any Term SOFR Rate Loan during the applicable Interest Period, and Lenders have provided notice of such determination to Administrative Agent, then Administrative Agent shall give Borrower Representative prompt written or telephonic notice of such determination. If such notice is given prior to a Benchmark Replacement Date, (i) any such requested Term SOFR Rate Loan shall be made as a Base Rate Loan, unless Borrower Representative shall notify Administrative Agent no later than 1:00 p.m. (New York City time) two (2) Business Days prior to the date of such proposed borrowing, that its request for such borrowing shall be cancelled or made as an unaffected type of Term SOFR Rate Loan, (ii) any Base Rate Loan or Term SOFR Rate Loan which was to have been converted to an affected type of Term SOFR Rate Loan shall be continued as or converted into a Base Rate Loan, or, if Borrower Representative shall notify Administrative Agent, no later than 1:00 p.m. (New York City time) two (2) Business Days prior to the proposed conversion, shall be maintained as an unaffected type of Term SOFR Rate Loan, and (iii) any outstanding affected Term SOFR Rate Loans shall be converted into a Base Rate Loan, or, if Borrower Representative shall notify Administrative Agent, no later than 1:00 p.m. (New York City time) two (2) Business Days prior to the last Business Day of the then current Interest Period applicable to such affected Term SOFR Rate Loan, shall be converted into an unaffected type of Term SOFR Rate Loan, on the last Business Day of the then current Interest Period for such affected Term SOFR Rate Loans (or sooner, if any Lender cannot continue to lawfully maintain such affected Term SOFR Rate Loan). Until such notice has been withdrawn, Lenders shall have no obligation to make an affected type of Term SOFR Rate Loan or maintain outstanding affected Term SOFR Rate Loans and no Borrower shall have the right to convert a Base Rate Loan or an unaffected type of Term SOFR Rate Loan into an affected type of Term SOFR Rate Loan.

(b) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any Loan Document (and, for the avoidance of doubt, any agreement executed in connection with an Interest Rate Hedge shall be deemed not to be an “Loan Document” for purposes of this **Section 14.1(b)**), if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any Loan Document so long as Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

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

(iii) Notices: Standards for Decisions and Determinations. Administrative Agent will promptly notify Borrower Representative and the Lenders of (i) the implementation of any Benchmark Replacement, and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Administrative Agent will notify Borrower Representative of, (x) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Administrative Agent or, if applicable, Borrower Representative or any Lender (or group of Lenders) pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any Loan Document except, in each case, as expressly required pursuant to this Section.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrowers shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable and documented out-of-pocket losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its Term SOFR Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender sustains: (i) if for any reason (other than a default by such Lender) a borrowing of any Term SOFR Rate Loans does not occur on a date specified therefor in a Notice of Borrowing or a telephonic request for borrowing, or a conversion to or continuation of any Term SOFR Rate Loans does not occur on a date specified therefor in a Notice of Conversion/Continuation or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Term SOFR Rate Loans occurs on any day prior to the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), including as a result of an assignment in connection with the replacement of a Lender pursuant to **Section 14.4(b)**; or (iii) if any prepayment of any of its Term SOFR Rate Loans is not made on any date specified in a notice of prepayment given by Borrowers. A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender for breakage or otherwise, as specified herein, and the circumstances giving rise thereto shall be delivered to Borrower Representative and shall be conclusive absent manifest error. In the absence of any such manifest error, Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof. Borrowers shall not be required to compensate a Lender pursuant to this **Section 14.1** for any such amounts incurred more than six (6) months prior to the date that such Lender delivers to Borrower Representative the foregoing certificate.

14.2 Increased Costs.

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

(i) 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 by, any Lender or LC Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or LC Issuer any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, LC Issuer or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such LC Issuer or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, LC Issuer or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, LC Issuer or other Recipient, Credit Parties will pay to such Lender, LC Issuer or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, LC Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital and Liquidity Requirements. If any Lender (including Swing Line Lender) or LC Issuer determines that any Change in Law affecting such Lender or LC Issuer or any lending office of such Lender or LC Issuer or such Lender's or LC Issuer's holding company, if any, regarding capital or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's or LC Issuer's capital or on the capital of such Lender's or LC Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender hereunder or the Loans made by, or participations in Letters of Credit and Swing Line Loans held by, such Lender, or the Letters of Credit issued by such LC Issuer, to a level below that which such Lender or LC Issuer or such Lender's or LC Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or LC Issuer's policies and the policies of such Lender's or LC Issuer's holding company with respect to capital adequacy and liquidity), then from time to time Credit Parties will pay to such Lender or LC Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or LC Issuer or such Lender's or LC Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or LC Issuer setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or LC Issuer or its holding company, as the case may be, as specified in **Sections 14.2(a)** and **14.2(b)** and the circumstances giving rise thereto shall be delivered to Borrower Representative and shall be conclusive absent manifest error. In the absence of any such manifest error, Credit Parties shall pay such Lender or LC Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or LC Issuer to demand compensation pursuant to this **Section 14.2** shall not constitute a waiver of such Lender's or LC Issuer's right to demand such compensation, provided that Credit Parties shall not be required to compensate a Lender or LC Issuer pursuant to this **Section 14.2** for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or LC Issuer, as the case may be, delivers to Borrowers the certificate referenced in **Section 14.2(c)** and notifies Borrower Representative of such Lender's or LC Issuer'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 six-month period referred to above shall be extended to include the period of retroactive effect thereof).

14.3 Taxes.

(a) Certain Terms. For purposes of this **Section 14.3**, and without limitation, the term "Lender" shall include LC Issuer and the term "Applicable Law" shall include FATCA.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Credit Party hereunder or under any other Loan Document shall be made free and clear of, without any deduction or withholding for, any Taxes, except as otherwise may be required by Applicable Law. If any Applicable Law (as determined in the discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then, the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then, the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 14.3**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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

(d) Tax Indemnification. The Credit Parties shall jointly and severally indemnify each Recipient and shall make payment in respect thereof within ten (10) Business 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 14.3**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any 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 any such payment or liability delivered to Borrower Representative by a Recipient (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error.

(e) Lender Indemnity. Each Lender shall severally indemnify Administrative Agent and make payment to Administrative Agent within ten (10) Business Days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 13.1(d)** relating to the maintenance of a participant register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this **Section 14.3(e)**.

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 14.3, such Credit Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of a return reporting such payment or other evidence of such payment satisfactory to Administrative Agent.

(g) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower Representative and Administrative Agent, at the time or times reasonably requested by Borrower Representative or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Representative or Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower Representative or Administrative Agent as will enable Borrower Representative or Administrative Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (ii) (A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that a Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower Representative and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Representative or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Representative or Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN (or W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(ii) executed originals of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit I-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN (or W-8BEN-E, as applicable) ; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or W-8BEN-E, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or I-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Representative or Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrower Representative or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal 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 Borrower Representative and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower Representative or Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower Representative and Administrative Agent to comply with their 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.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Representative and Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds Unless required by Applicable Law, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any indemnified party determines, in its discretion exercised in Good Faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 14.3** (including by the payment of additional amounts pursuant to this **Section 14.3**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 14.3** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of the indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 14.3(h)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 14.3(h)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 14.3(h)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival Each party's obligations under this **Section 14.3** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

14.4 Mitigation Obligations; Designation of a Different Lending Office

(a) Designation of a Different Lending Office If any Lender requests compensation under **Section 14.2**, or requires any Borrower to pay any Indemnified Taxes or additional amounts to such Lender or any Governmental Authority for the account of such Lender pursuant to **Section 14.3**, then such Lender shall (at the request of Borrowers) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 14.2** or **Section 14.3**, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment **ON DEMAND**.

(b) Replacement of Lenders. If any Lender requests compensation under **Section 14.2**, or if a Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 14.3** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with **Section 14.4(a)**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then, Borrowers may, at their sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 15.2**), all of its interests, rights (other than its existing rights to payments pursuant to **Section 14.2** or **Section 14.3**) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if such other Lender accepts such assignment); provided that: (i) Borrowers shall have paid to Administrative Agent the assignment fee specified in **Section 13.1(b)**; (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Obligations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under **Section 14.1**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrowers (in the case of all other amounts); (iii) in the case of any such assignment resulting from a claim for compensation under **Section 14.2** or payments required to be made pursuant to **Section 14.3**, such assignment will result in a reduction in such compensation or payments thereafter; (iv) such assignment does not conflict with Applicable Law; and (v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent. A Non-Consenting Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrowers to require such assignment and delegation cease to apply. Except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

SECTION 15

MISCELLANEOUS

15.1 Notices.

(a) Notices Generally. Except as provided in this **Section 15.1(b)**, all notices and other communications provided for herein or in any other Loan Document shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows, as follows:

(i) if to Administrative Agent, Borrowers, Borrower Representative or any other Credit Party, to the address, telecopier number or electronic mail address specified in **Appendix B**:

(ii) if to any Lender, the LC Issuer or Swing Line Lender, to the address, telecopier number or electronic mail address in its Administrative Questionnaire on file with Administrative Agent.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in **Section 15.1(b)**, shall be effective as provided in **Section 15.1(b)**.

(b) Electronic Communications. Notices and other communications to Administrative Agent, the Lenders and the LC Issuer hereunder or under any other Loan Document may be delivered or furnished by electronic communication (including, without limitation, an Approved Electronic Communication) pursuant to procedures adopted or approved by Administrative Agent from time to time, provided that the foregoing shall not apply to notices to any Lender or the LC Issuer if such Lender or the LC Issuer, as applicable, has notified Administrative Agent and Borrower Representative that it is incapable of receiving such notices and other communications by electronic communication. Administrative Agent may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures adopted or approved by it, provided that adoption or approval of such procedures may be limited to particular notices or communications. Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, with respect to clauses (i) and (ii) above, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Change of Address, Etc. Any party hereto may change its address, telecopier number or e-mail address for notices and other communications hereunder and under any other Loan Documents by written notice to the other parties hereto in the manner prescribed in **Section 15.1(a)**.

(d) Platform.

(i) Each Credit Party agrees that Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the LC Issuer and the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "**Platform**"), at Borrowers' expense. "**Communications**" (as used in this clause (d)) means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Credit Party pursuant to any Loan Document or the transactions contemplated therein that is distributed to Administrative Agent or any of its Related Parties, including Administrative Agent Professionals (individually, an "**Agent Party**," and, collectively, the "**Agent Parties**"), any Lender or the LC Issuer by means of electronic communications pursuant to this **Section 15.1**, including through the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties do not warrant the adequacy of the Platform and expressly disclaim any liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall any Agent Party have any liability to Borrowers or the other Credit Parties, any Lender or any other Person for damages of any kind, including, without limitation, direct or indirect, special, punitive, incidental, exemplary or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower's, any other Credit Party's or Administrative Agent's transmission of Communications through the Platform.

(iii) Each Credit Party further agrees that certain of the Lenders may not wish to receive material non-public information with respect to the Credit Parties or their securities (each, to such extent, a **"Public Lender"**). The Credit Parties shall be deemed to have authorized the Agent Parties and the Lenders to treat any Communications marked "PUBLIC" as not containing any material non- public information with respect to the Credit Parties or their securities for purposes of United States federal and state securities laws. All Communications marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). The Agent Parties, the Credit Parties and the Lenders shall treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

(iv) Each Public Lender agrees to cause at least one delegate at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side" portion of the Platform and that may contain material non-public information with respect to any Credit Party or its securities for purposes of United States Federal or state securities laws.

15.2 **Amendments.**

(a) Consent; Amendment; Waiver. None of this Agreement, any other Loan Document or any term hereof or thereof may be amended orally, but only by an instrument in writing signed by the Required Lenders, or in the case of Loan Documents executed by Administrative Agent (and not the other Lenders), signed by Administrative Agent and approved by the Required Lenders and, in the case of an amendment, also by Credit Parties (or Borrower Representative acting on their behalf); provided, however, that:

(i) without the prior written consent of Administrative Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties, or discretion of Administrative Agent; and without the prior written consent of Swing Line Lender and Administrative Agent, no amendment or waiver with respect to the provisions of **Section 2.3** shall be effective;

(ii) without the prior written consent of LC Issuer and Administrative Agent, no modification shall be effective with respect to any LC Obligations, the definitions of "LC Conditions" or "Defaulting Lender" (except to be more inclusive of the facts and circumstances that would cause a Lender to become a Defaulting Lender) or the terms of **Sections 2.4** and **6.2(e)** or that constitutes a waiver of any LC Condition or the condition precedent set forth in **Section 6.2(e)** (to the extent it relates to the issuance of or any amendment or other modification of or to a Letter of Credit);

(iii) without the prior written consent of each Lender directly affected thereby, including a Defaulting Lender but subject to **Section 14.1**, no modification shall be effective that would (A) increase the Commitment of such Lender (or reinstate any Commitment terminated pursuant to **Section 2.1(c)**); (B) reduce the amount of, or waive, delay or extend the payment of, or forgive the payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); provided that only the consent of the Required Lenders shall be necessary to waive any obligation of Borrowers to pay interest at the Default Rate during the existence of an Event of Default and to modify **Section 14.1**; (C) extend the Stated Revolving Commitment Termination Date; (D) make (or permit the payment of) any Loan, interest, fee or other amount payable hereunder or under any other Loan Document in any currency other than a currency expressly provided herein or in any other Loan Document for such payment; or (E) amend or otherwise modify this clause (iii);

(iv) without the prior written consent of all Lenders (except, subject to clause (iii) above, a Defaulting Lender), no modification shall be effective that would (A) amend, waive, or alter the application of payments or obligations of Administrative Agent, LC Issuer or any Lender under **Section 5.5** or **Section 5.6** (except to the extent provided in **Section 4.2**); (B) amend or waive the provisions of this **Section 15.2(a)**; (C) amend the definitions of “Pro Rata,” “Pro Rata Share” or “Required Lenders” (and any defined terms used in each such definition) or any other provision of this Agreement or any other Loan Documents specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder; (D) release all or substantially all of the Collateral, except to the extent expressly permitted by the terms hereof or of any Security Document relative thereto; (E) release any Obligor from liability for any Obligations, except to the extent expressly permitted by the terms hereof or of any Loan Document evidencing such liability; (F) contractually subordinate any of Administrative Agent’s Liens in and to the Collateral, except to the extent expressly permitted by the terms hereof; or (G) contractually subordinate the payment of any Obligations to any other Debt;

(v) without the prior written consent of the Required Lenders (except a Defaulting Lender), increase the advance rates or amend the definition of “Borrowing Base” (or any defined term used in such definition) if the effect of such amendment is to increase borrowing availability; provided that the foregoing shall not impair the ability of Administrative Agent to add, remove, reduce or increase any Reserves;

(vi) without the prior written consent of each Revolving Lender (except a Defaulting Lender), amend the definition “Required Lenders”;
and

(vii) without the prior written consent of the Required Lenders, amend any provision in a Loan Document for which Required Lenders’ consent is required.

The foregoing notwithstanding (1) this Agreement or any other Loan Document may be amended to increase the interest rate or any fees hereunder with the consent of Administrative Agent and Credit Parties (or Borrower Representative, acting on their behalf) only; (2) this Agreement and the other Loan Documents may be amended to reflect definitional, technical, and conforming modifications to the extent necessary to effectuate any increase in the Revolving Commitments pursuant to **Section 2.1(f)** with the prior written consent of Administrative Agent, Borrowers (or Borrower Representative, acting on their behalf) and each Lender or Eligible Assignee participating in such increase pursuant to documentation reasonably satisfactory to Administrative Agent and Borrowers (or Borrower Representative, acting on their behalf) without the consent of any other Lender or LC Issuer; (3) modifications to the Loan Documents may be made to the extent necessary to grant a security interest in additional Collateral to Administrative Agent for the benefit of the Secured Parties with the prior written consent of Administrative Agent and affected Credit Parties (or Borrower Representative, acting on their behalf) only pursuant to documentation satisfactory to Administrative Agent and such Credit Parties (or Borrower Representative, acting on their behalf) without the consent of any Lender or LC Issuer; (4) only the consent of Administrative Agent shall be required to amend **Appendix A** to reflect assignments of the Revolving Commitment and Loans in accordance with this Agreement; (5) modifications of a Loan Document that deal solely with the rights and duties of Lenders, Administrative Agent, and/or LC Issuer as among themselves shall not require the consent of any Credit Party; (6) modifications of a Loan Document to cure or correct administrative errors or omissions, or any ambiguity, omission, defect or inconsistency, or to effect or reflect administrative changes may be made by Administrative Agent and Credit Parties (or Borrower Representative, acting on their behalf) without the consent of any other party to the Loan Documents, so long as (A) such modification does not adversely affect the rights of any Lender in any material respect and (B) all Lenders shall have received at least five (5) Business Days' prior written notice thereof and Administrative Agent shall not have received within five (5) Business Days after the date of receipt of such notice to the Lenders a written notice from the Required Lenders stating that the Required Lenders object to such modification, (7) if this Agreement or any Loan Document contains any blank spaces, such as for dates or amounts, Credit Parties and Lenders hereby authorize and direct Administrative Agent to complete such blank spaces according to the terms upon which the transactions contemplated hereby or thereby were contemplated, (8) only the consent of the parties to the Auto Borrow Agreement, the Fee Letter or any agreement relating to a Bank Product shall be required for any modification of such agreement, and any non-Lender that is party to any agreement relating to a Bank Product shall have no right to participate in any manner in modification of any other Loan Document; and (9) Administrative Agent (acting alone) may make the modifications contemplated by **Section 14.1(h)(ii)**.

(b) Amendment and Restatement. Notwithstanding anything contained herein to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of Credit Parties (or Borrower Representative, acting on their behalf) and Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated (but such Lender shall be entitled to the benefit of **Sections 14, 15.3, and 15.4**), such Lender shall have no other Commitment or other obligation hereunder and shall have been Paid in Full all Obligations owing to it or accrued for its account under this Agreement. Any waiver or consent granted by Administrative Agent, LC Issuer or Lender shall not constitute a modification of this Agreement, except to the extent expressly provided in such waiver or consent, or constitute a course of dealing by such Persons at variance with the terms of the Agreement such as to require further notice by such Persons of such their intent to require strict adherence to the terms of the Agreement in the future.

(c) Strict Compliance. Administrative Agent, LC Issuer; and the Lenders expressly reserve the right to require strict compliance with the terms of this Agreement and each other Loan Document. No waiver or course of dealing shall be established by (i) the failure or delay of Administrative Agent, LC Issuer or any Lender to require strict performance of any Credit Party to this Agreement or any other Loan Document or to exercise any rights or remedies with respect to Collateral or otherwise; (ii) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (iii) acceptance by Administrative Agent, LC Issuer or any Lender of performance by any Credit Party under this Agreement or any other Loan Document in a manner other than that specified herein or therein.

(d) Payment for Consents. No Credit Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee, or otherwise, to any Lender in its capacity as a Lender hereunder as consideration for any consent by such Lender with respect to any amendment, waiver of other modification of or to any Loan Document, unless such remuneration or thing of value is concurrently paid, on substantially the same terms, on a Pro Rata basis, to all Lenders providing their consent. For avoidance of doubt, the foregoing limitation shall not apply to any fees paid to Administrative Agent in its capacity as Administrative Agent in such regard.

(e) Non-Consenting Lender.

(i) Each Borrower, LC Issuer and each Lender (including any Non-Consenting Lender) grants to Administrative Agent the option (without any obligation, however), in its capacity as a Lender, to purchase all (but not less than all) of a Non-Consenting Lender's portion of the Commitments, the Loans, and LC Obligations owing to it and any Notes held by it and all of its rights and obligations hereunder and under the other Loan Documents at a price equal to the outstanding principal amount of the Loans and LC Obligations for unreimbursed draws payable to such Non-Consenting Lender plus any accrued but unpaid interest on such Loans and any accrued but unpaid commitment fee arising under **Section 3.2(b)** and Letter of Credit Fees arising under **Section 3.2(c)** owing to such Non-Consenting Lender plus the amount necessary to Cash Collateralize any Letters of Credit issued by such Non-Consenting Lender (if any). If Administrative Agent exercises its option under this **Section 15.2**, the Non-Consenting Lender shall promptly execute and deliver to Administrative Agent any Assignment Agreement and other agreements and documentation that Administrative Agent shall determine are necessary to effect such assignment and that are provided to such Non-Consenting Lender. If the Non-Consenting Lender fails for whatever reason to execute and delivery such Assignment Agreement, other agreements or other documentation within three (3) Business Days after the date of its receipt thereof, then, Administrative Agent shall have the power (at its election, but without obligation) to do so as attorney-in-fact for such Non-Consenting Lender, and any execution and delivery of such Assignment Agreement, such other agreements and such other documentation by Administrative Agent under such power of attorney shall binding upon such Non-Consenting Lender. Administrative Agent may assign its purchase option and powers under this **Section 15.2** to any Eligible Assignee if such assignment otherwise complies with the requirements of **Section 13.1**.

(ii) Borrowers may, at their sole expense and effort, replace such Non-Consenting Lender in accordance with **Section 14.4**.

15.3 Indemnity; Expenses. EACH CREDIT PARTY SHALL INDEMNIFY, DEFEND, SAVE, PROTECT, AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY "CLAIMS" AND "EXTRAORDINARY EXPENSES" (AS SUCH TERMS ARE DEFINED IN **SECTION 1.1**) THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE; provided, however, that in no event shall any Credit Party have any obligation thereunder to indemnify, defend or hold harmless an Indemnitee with respect to any Claim or Extraordinary Expense that is determined in a final, non-appealable judgment by a court of competent jurisdiction by final and non-appealable judgment binding on such Indemnitee to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee. In addition to all other Obligations, the obligations and liabilities described in this Section 15.3 shall (a) constitute Obligations; (b) be in addition to, and cumulative with, any other indemnification provisions set forth elsewhere in this Agreement or any other Loan Document; (c) be secured by the Collateral; (d) be due and payable by Credit Parties promptly following written demand therefor; (e) be chargeable against Borrowers' in the manner set forth in **Section 4.1(b)** (provided, however, that Administrative Agent shall have no obligation to charge such amounts in such manner); and (f) survive termination of this Agreement and the other Loan Documents. In addition to the foregoing, Administrative Agent shall have the right at any time or from time to time while any Event of Default is continuing, to require that the obligations and liabilities described in this **Section 15.3** be Cash Collateralized.

15.4 Reimbursement Obligations. Without limiting the terms of **Section 15.3**, Credit Parties shall reimburse Administrative Agent for all Extraordinary Expenses and for all legal, accounting, appraisal, consulting, and other fees, costs, and expenses incurred by it in connection with (a) negotiation and preparation of this Agreement and the other Loan Documents, including any amendment, forbearance, waiver, restatement, supplement, waiver, consent or other modification thereof; (b) administration of and actions relating to any Collateral, this Agreement, any Loan Document, and the transactions contemplated hereby and thereby (including any actions taken to establish, perfect or maintain priority of Administrative Agent's Liens in and to any Collateral, to maintain any insurance required hereunder, or to verify (or preserve) the existence or value of Collateral); (c) use of any Platform or Register, (d) credit investigations and background checks; and (e) subject to the limits of **Section 8.4(b)**, each inspection, field audit, field examination, or appraisal with respect to any Obligor, Subsidiary, or Collateral, whether prepared by Administrative Agent's personnel or a third party. Credit Parties also shall pay all Extraordinary Expenses of Administrative Agent and all legal (including all costs of internal counsel or, in lieu thereof, a documentation fee comparable in amount thereto), accounting, appraisal, consulting, and other fees, costs, and expenses incurred by Administrative Agent and each Lender in connection with the enforcement of, or any "workout," "restructuring," or an Insolvency Proceeding concerning any Credit Party or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending any of the Loan Documents, irrespective of whether a lawsuit or other Adverse Proceeding is brought, or in taking any enforcement action or any remedial action with respect to any Collateral. The parties agree that the costs and expenses indemnified by the Credit Parties hereunder shall not include expenses relating to disputes solely between or among the Lenders, in their respective capacities as such, or any dispute solely between or among a Lender, in its capacity as such, and its Affiliates (excluding, for the avoidance of doubt, expenses arising (i) in connection with disputes involving Administrative Agent (in its capacity as such) or the LC Issuer (in its capacity as such) on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand) or (ii) from acts or omissions of any Credit Parties or their Subsidiaries.

15.5 Performance of Credit Parties' Obligations. Administrative Agent may, in its discretion at any time and from time to time, at Credit Parties' expense, pay any amount or do any act required of a Credit Party under any Loan Document or otherwise requested by Administrative Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Administrative Agent's Liens in any Collateral, including any payment of any claim by any Third Party Claimant (including any judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim), or any discharge of a Lien. All payments, costs, and expenses (including Extraordinary Expenses) of Administrative Agent under this **Section 15.5** shall be reimbursed to Administrative Agent by Credit Parties, promptly following written demand therefor, with interest from the date incurred to the date of payment thereof at the Default Rate. Any payment made or action taken by Administrative Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

15.6 **Setoff.** From and after the occurrence of any Event of Default and during the continuance thereof, in addition to (and not in limitation of) any rights now or hereafter granted under Applicable Law to Administrative Agent, LC Issuer, any Lender, or, subject to the provisions of **Section 13.1(d)**, any Participant, each subsequent holder of any of the Obligations, and each of their respective Affiliates (collectively, for purposes of this **Section 15.6**, the “**Setoff Parties**” and, individually, a “**Setoff Party**”), is hereby authorized, subject to the prior consent of Administrative Agent, by each Credit Party to setoff and to appropriate and apply any and all deposits (general or special, time or demand, including Debt evidenced by certificates of deposit, in each case, whether matured or un-matured, but excluding (x) any amounts held by any Setoff Party in any escrow payroll, trust, tax or fiduciary account and (y) without the prior consent of Administrative Agent, any Collection Account, and any other Debt at any time held or owing by any Setoff Party to or for the credit or the account of any Credit Party, against the Obligations as provided in this Agreement, irrespective of whether (a) any demand for such Obligations has been made; or (b) the Obligations have been accelerated as contemplated in **Section 11.2**; or (c) such Obligations are contingent or un-matured. Any sums obtained by any Setoff Party shall be subject to the requirements for application of payments to the Obligations as set forth in this Agreement. The rights granted to each Setoff Party under this **Section 15.6** may be exercised at any time or from time to time, without notice to any Credit Party or any other Person, except that each Setoff Party shall obtain the prior consent of Administrative Agent and shall notify Administrative Agent promptly (but in any event within one (1) Business Day) after exercising such right of setoff, specifying the amount thereof. Each Credit Party hereby waives any right that it may have as a matter of Applicable Law to any such notice. In addition to the foregoing, and notwithstanding any provision hereof to the contrary, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of **Section 4.2** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, LC Issuer, Swing Line Lender and the other Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

15.7 **Independence of Covenants; Severability.** All covenants hereunder and under any other Loan Document shall be given independent effect so that if any particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise would be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. Wherever possible, each provision of this Agreement and the other Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. To the extent any such provision is found to be invalid or unenforceable under Applicable Law in a given jurisdiction, then (a) such provision shall be ineffective only to such extent; (b) the remainder of such provision and the other provisions of this Agreement and the other Loan Documents shall remain in full force and effect in such jurisdiction; and (c) such provision shall remain in full force and effect in any other jurisdiction.

15.8 **Cumulative Effect; Conflict of Terms.** The parties to this Agreement and each other Loan Document acknowledge that different provisions of this Agreement and the other Loan Documents may contain requirements, limitations, restrictions, or permissions relating to the same subject matter and, in such case, all of such provisions shall be deemed to be cumulative (rather than instead of one another) and must be satisfied or performed, as applicable. Except as otherwise provided herein or in another Loan Document (by specific reference to the applicable provision of this Agreement), to the extent any provision contained in this Agreement conflicts directly with any provision in another Loan Document, then, the provision in this Agreement shall control.

15.9 **Counterparts.** This Agreement, the other Loan Documents and any amendments, waivers, or consents relating hereto or thereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which when taken together, shall constitute one and the same instrument.

15.10 **Fax or Other Transmission.** Subject to compliance with **Section 15.1** and in accordance therewith, delivery by one or more parties hereto of an executed counterpart of this Agreement and any other Loan Document via facsimile, telecopy or other electronic method of transmission pursuant to which the signature of such party can be seen or presumed sent (including Adobe Corporation's Portable Document Format or PDF) shall have the same force and effect as the delivery of an original manually executed counterpart of this Agreement and such other Loan Document or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Any party delivering an executed counterpart of this Agreement or any other Loan Document to any other party pursuant hereto or to any other Loan Document by facsimile or other electronic method of transmission in accordance with **Section 15.1**, shall also deliver an original executed counterpart thereof to such party, but the failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement or such other Loan Document. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form.

15.11 **NOTICE OF FINAL AGREEMENT.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

15.12 **Relationship with Lenders.** The Debts, obligations and Commitments of each Lender hereunder and under each other Loan Document are several, and not joint, and no Lender shall be responsible for any Debts, obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of Entity. Amounts payable hereunder by Administrative Agent, LC Issuer or any Lender, on the one hand, to any other of such Persons, on the other hand, shall be separate and independent Debts and obligations, and claims by one of such Persons against any other of such Persons may proceed between such Persons without requiring the joinder of Administrative Agent, LC Issuer or any Lender as an additional party. Nothing in this Agreement and no action of Administrative Agent, LC Issuer or Lenders pursuant to the Loan Documents shall cause Administrative Agent, LC Issuer and the Lenders, or any of them, to be deemed a partnership, association, joint venture, or any other kind of Entity with each other or with any Credit Party, or to have any Control of each other or any Credit Party.

15.13 **No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated by any Loan Document, Credit Parties acknowledge and agree that: (a) (i) the credit facility(ies) evidenced by this Agreement and each other Loan Document and any related arranging or other services by Administrative Agent, any Lender, any of their Affiliates are arm's-length commercial transactions between Credit Parties and such Persons; (ii) Credit Parties have consulted their own legal, accounting, regulatory, and tax advisors to the extent they have deemed appropriate, in regard thereto; and (iii) Credit Parties are capable of evaluating and understanding, and do understand and accept, the terms, risks, and conditions of the transactions contemplated by this Agreement and the other Loan Documents; (b) each of Administrative Agent, LC Issuer, Lenders and their Affiliates is and has been acting solely as a principal in connection with the credit facility(ies) evidenced by this Agreement and each other Loan Document, is not the financial advisor, agent, or fiduciary of, to, or for any Credit Party or any of their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by this Agreement and the other Loan Documents, except as may be expressly set forth herein or therein; and (c) Administrative Agent, LC Issuer, Lenders and their Affiliates now or hereafter may be engaged in a broad range of transactions that involve interests that differ from the Credit Parties and their Affiliates and have no obligation to disclose any of such interests to any Credit Party or any such Affiliate at any time. To the fullest extent permitted by Applicable Law, each Credit Party hereby waives and releases any claims that it may have against Administrative Agent, LC Issuer, Lenders and their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Agreement or any other Loan Document.

15.14 Confidentiality; Credit Inquiries. Each of Administrative Agent, LC Issuer and the Lenders agrees to maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective Related Parties (provided such Persons are informed of the confidential nature of the Information and instructed to keep the Information confidential); (b) to the extent requested by any Governmental Authority purporting to have jurisdiction over it; (c) to the extent required by Applicable Law or by any subpoena or similar legal process; (d) to the extent requested or required by any state, federal, or foreign authority or examiner regulating banks or banking or the making of loans and financial accommodations to others; (e) to any other party hereto or, as contemplated by **Section 13.1**, to any actual or prospective Transferee, and then only on a confidential basis consistent herewith; (f) in connection with the exercise of any remedies, the enforcement of any rights, or any action or proceeding relating to any Loan Documents; (g) subject to an agreement containing provisions substantially the same as this **Section 15.14**, to any actual or prospective Bank Product Provider (or its advisors); (h) with the consent of Borrower Representative (which consent shall not be unreasonably withheld, conditioned or delayed); (i) to the extent such Information (A) becomes publicly available other than as a result of a breach of this **Section 15.14**, or (B) is available to Administrative Agent, LC Issuer or any Lender or any of their respective Affiliates on a non-confidential basis from a source other than Obligor; (j) to any rating agency when required by it, provided, that before any such disclosure, such rating agency shall be advised of the confidential nature of such Information; (k) for purposes of establishing a "due diligence" defense; (l) in response to credit inquiries from third Persons concerning any Credit Party or any of its Subsidiaries (although none of Administrative Agent, any Lender or LC Issuer shall be required to respond thereto); and (m) to Gold Sheets and other similar bank trade publications (such information to consist of deal terms and other information customarily found in such publications). Notwithstanding the foregoing, Administrative Agent, LC Issuer and the Lenders may publish or disseminate general information describing the credit facility evidenced hereby, including the names and addresses of Credit Parties and the Subsidiaries and a general description of Credit Parties' and the Subsidiaries' businesses, and may use Credit Parties' logos, trademarks, insignia, or product photographs in any "tombstone" or comparable advertising materials on its website or in other of Administrative Agent, LC Issuer, or such Lender's marketing materials. As used in this **Section 15.14**, "Information" means all information received (whether before or after the Closing Date) from an Obligor relating to it or its business. Any Person required to maintain the confidentiality of Information pursuant to this **Section 15.14** shall be deemed to have complied therewith if it exercises the same degree of care in regard thereto that it accords its own confidential information. Each of Administrative Agent, LC Issuer, and the Lenders acknowledges that (A) Information may include material non-public information concerning a Credit Party or Subsidiary; (B) it has developed compliance procedures regarding the use of material non-public information; and (C) it will handle such material non-public information in accordance with Applicable Law, including federal and state securities laws. Any of the foregoing to the contrary notwithstanding, (i) each Credit Party hereby authorizes each of Administrative Agent, LC Issuer and the Lenders (each, at its discretion and without any obligation to do so) to respond to usual and customary credit inquiries from third parties concerning any Credit Party, and (ii) Administrative Agent, LC Issuer and the Lenders shall not be obliged to return to any Obligor any Information received from it, but may do so, subject to compliance with any regulatory and internal recordkeeping requirements then applicable thereto.

15.15 Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED BY THE TERMS HEREOF OR THEREOF, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING HEREFROM OR THEREFROM (WHETHER ARISING UNDER CONTRACT LAW, TORT LAW OR OTHERWISE) SHALL, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION STATE.

15.16 Submission to Jurisdiction. EACH PARTY HERETO HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE JURISDICTION STATE AND THE UNITED STATES DISTRICT COURT FOR EACH DISTRICT OF THE JURISDICTION STATE, IN RESPECT OF ANY PROCEEDING, DISPUTE, OR ADVERSE PROCEEDING BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY WITH RESPECT HERETO OR THERETO, AND EACH PARTY HERETO AGREES THAT ANY SUCH PROCEEDING, DISPUTE, OR ADVERSE PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN SUCH COURTS. WITH RESPECT TO SUCH COURTS, EACH PARTY HERETO IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS, AND DEFENSES THAT IT MAY HAVE REGARDING PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE, OR INCONVENIENT FORUM. EACH PARTY HERETO WAIVES PERSONAL SERVICE OF PROCESS OF ANY AND ALL PROCESS SERVED UPON IT AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR THE GIVING OF NOTICES GENERALLY IN **SECTION 15.1**, SUCH SERVICE TO BE EFFECTIVE AT THE TIME SUCH NOTICE WOULD BE DEEMED DELIVERED UNDER **SECTION 15.1**. NOTHING HEREIN SHALL LIMIT THE RIGHT OF ADMINISTRATIVE AGENT, OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN ANY OTHER COURT OR JURISDICTION, NOR LIMIT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO PRECLUDE ENFORCEMENT BY ADMINISTRATIVE AGENT OF ANY JUDGMENT OR ORDER OBTAINED IN ANY FORUM OR JURISDICTION. NOTHING CONTAINED HEREIN SHALL LIMIT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS (INCLUDING ENFORCEMENT OF ANY JUDGMENT OR ORDER) AGAINST ANY CREDIT PARTY IN ANY OTHER JURISDICTION OR LIMIT THE RIGHT OF ANY SUCH PERSON TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

15.17 Waivers; Limitation on Damages; Limitation on Liability.

(a) WAIVER OF JURY TRIAL. TO THE EXTENT FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO, BY EXECUTION HEREOF, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ADVERSE PROCEEDING BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY WITH RESPECT HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO ALL PARTIES TO ENTER INTO AND ACCEPT THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT. EACH PARTY HERETO CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. EACH OF THE PARTIES HERETO AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS AGREEMENT.

(b) WAIVER OF CERTAIN DAMAGES. NO PARTY TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY SUCCESSOR OR ASSIGNEE OF SUCH PERSON, OR ANY THIRD PARTY BENEFICIARY, OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH ANY SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AS A RESULT OF ANY TRANSACTION CONTEMPLATED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, INCLUDING SPECIFICALLY, BUT WITHOUT LIMITATION, IN THE CASE OF ADMINISTRATIVE AGENT, THE TAKING OF ANY ENFORCEMENT ACTION, PROVIDED THAT THE FOREGOING SHALL NOT OPERATE TO LIMIT THE CREDIT PARTIES' INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN RESPECT OF ANY DAMAGES PAID BY ANY INDEMNITEE TO ANY THIRD PARTY.

(c) OTHER WAIVERS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH CREDIT PARTY WAIVES (I) PRESENTMENT, DEMAND, PROTEST, NOTICE OF PRESENTMENT, NOTICE OF DISHONOR, DEFAULT, NON-PAYMENT, MATURITY, RELEASE, COMPROMISE, SETTLEMENT, EXTENSION, OR RENEWAL OF ANY COMMERCIAL PAPER, ACCOUNTS, DOCUMENTS, INSTRUMENTS, CHATTEL PAPER, AND GUARANTIES AT ANY TIME HELD BY ADMINISTRATIVE AGENT, LC ISSUER OR ANY LENDER ON WHICH A CREDIT PARTY MAY IN ANY WAY BE LIABLE; (II) NOTICE BEFORE TAKING POSSESSION OR ARTICLE 9 CONTROL OF ANY COLLATERAL; (III) ANY BOND OR SECURITY THAT MIGHT BE REQUIRED BY A COURT BEFORE ALLOWING ADMINISTRATIVE AGENT, LC ISSUER OR ANY LENDER TO EXERCISE ANY RIGHTS OR REMEDIES UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; (IV) NOTICE OF ACCEPTANCE HEREOF OR OF ANY OTHER LOAN DOCUMENT; (V) ALL RIGHTS TO INTERPOSE ANY CLAIMS, DEDUCTIONS, RIGHTS OF SETOFF, DISCOUNTS, CHARGE BACKS OR COUNTERCLAIMS OF ANY NATURE (OTHER THAN COMPULSORY COUNTERCLAIMS) IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL, OR ANY MATTER ARISING THEREFROM OR RELATING HERETO OR THERETO; AND (VI) ANY CLAIM UNDER ANY APPLICABLE LAW OR EQUITABLE PRINCIPLE REQUIRING ADMINISTRATIVE AGENT, LC ISSUER OR ANY LENDER TO MARSHAL ANY ASSETS IN FAVOR OF ANY CREDIT PARTY OR AGAINST ANY OBLIGATIONS OR OTHERWISE ATTEMPT TO REALIZE UPON ANY COLLATERAL OR ANY CLAIM AGAINST, OR COLLATERAL, OF ANY OBLIGOR, OR ANY APPRAISEMENT, EVALUATION, STAY, EXTENSION, HOMESTEAD, REDEMPTION, OR EXEMPTION LAWS NOW OR HEREAFTER IN FORCE TO PREVENT OR HINDER THE ENFORCEMENT OF THIS AGREEMENT. EACH CREDIT PARTY ACKNOWLEDGES THAT THE FOREGOING WAIVERS ARE A MATERIAL INDUCEMENT TO ADMINISTRATIVE AGENT, LC ISSUER AND THE LENDERS' ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND THAT ADMINISTRATIVE AGENT, LC ISSUER AND THE LENDERS ARE RELYING UPON THE FOREGOING IN THEIR DEALINGS WITH CREDIT PARTIES.

(d) ACKNOWLEDGEMENT OF WAIVERS. EACH PARTY HERETO HAS REVIEWED THE FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL AND, WITH RESPECT TO EACH CREDIT PARTY, OTHER RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF ANY ADVERSE PROCEEDING, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

15.18 **Limitation on Liability; Presumptions.** None of Administrative Agent, LC Issuer or any Lender shall have any liability to any Obligor (whether in tort, contract, equity, or otherwise) for losses suffered by such Person in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement or any other Loan Document, or any act, omission, or event (including, without limitation, any act, omission or event attributable to or arising from Administrative Agent's, LC's Issuer's or any Lender's negligence or strict liability) occurring in connection herewith or therewith, unless as determined by a court of competent jurisdiction by a final and non-appealable judgment binding on Administrative Agent, LC Issuer or any Lender that the losses were the result of acts or omissions constituting gross negligence, bad faith or willful misconduct on the part of Administrative Agent, LC Issuer or any Lender. In any such litigation, each of Administrative Agent, LC Issuer and each Lender shall be entitled to the benefit of the rebuttable presumption that each acted in Good Faith and with the exercise of ordinary and reasonable care in the performance by it of the terms of this Agreement and the other Loan Documents.

15.19 **PATRIOT Act Notice.** Administrative Agent, LC Issuer and the Lenders hereby notify Credit Parties that pursuant to the requirements of the PATRIOT Act and other Applicable Law, including the Beneficial Ownership Regulation, Administrative Agent, LC Issuer and the Lenders are required to obtain, verify, and record information that identifies each Obligor, including its legal name, address, tax ID number, and other information that will allow Administrative Agent, LC Issuer and the Lenders to identify it properly in accordance with the PATRIOT Act, the Beneficial Ownership Regulation and such other Applicable Law. Administrative Agent, LC Issuer and the Lenders may also require information, documents and certifications regarding each Obligor, if any, and may require information, documents and certifications regarding each Obligor's management and owners, such as legal names, addresses, social security numbers, and dates of birth, in accordance with the PATRIOT Act, the Beneficial Ownership Regulation and such other Applicable Law.

15.20 **Powers.** All powers of attorney granted to Administrative Agent, LC Issuer or any Lender herein or in any other Loan Document shall be deemed to be coupled with an interest and are irrevocable until Payment in Full of the Obligations.

15.21 **No Tax Advice.** Each Credit Party acknowledges and agrees that, with respect to all tax and accounting matters relating to this Agreement, the other Loan Documents, or the transactions contemplated herein and therein, it has not relied on any representations made, consultation provided by, or advice given or rendered by Administrative Agent, LC Issuer, or any Lender, or any of their representatives, agents, or employees; and, instead, such Credit Party has sought, and relied upon, the advice of its own tax and accounting professionals with respect to all such matters.

15.22 **Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used to do so shall be that at which, in accordance with normal banking procedures Administrative Agent could purchase the first currency with such other currency on the Business Day preceding the date on which final judgment is given, as determined by Administrative Agent in its discretion. The obligation of each Obligor in respect of any such sum due from it to Administrative Agent, LC Issuer or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than the currency in which such sum is denominated in accordance with the applicable provisions of this Agreement or any other Loan Document (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by Administrative Agent (for itself or on behalf of LC Issuer or a Lender) of any sum adjudged to be so due in the Judgment Currency, Administrative Agent may, in accordance with normal banking procedures, purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to Administrative Agent, LC Issuer, or a Lender from any Obligor in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Administrative Agent, LC Issuer, and each Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to Administrative Agent, LC Issuer, or a Lender in such currency, Administrative Agent, LC Issuer, or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under Applicable Law).

15.23 **Survival of Representations and Warranties, etc.** All representations and warranties made by any Credit Party under this Agreement and the other Loan Documents shall survive, and not be waived by, the execution of this Agreement or any other Loan Document by Administrative Agent, LC Issuer or any Lender, any investigation or inquiry by Administrative Agent, LC Issuer or any Lender or the making of any Loan or the issuance of any Letter of Credit. Without limiting the generality of the foregoing clause (a), all of the representations, warranties, covenants, and indemnities of **Section 7.23** and **Section 8.9** shall survive the termination of this Agreement, Payment in Full of the Obligations, and the release of Administrative Agent's Lien on any Borrowers or Subsidiaries' Properties, if any, and shall survive the transfer of any or all right, title, and interest in and to such Properties by such Persons, whether or not the transferee thereof is an Affiliate of such Persons.

15.24 **Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by or on behalf of any Obligor or the transfer to Administrative Agent, LC Issuer, or any Lender of any Property (including through setoff) should for any reason subsequently be declared to be void or voidable under any Debtor Relief Law, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of Property (collectively, a "Voidable Transfer"), and if Administrative Agent, LC Issuer or any Lender, or any of them, is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that such Persons, or any of them, is required or elects to repay or restore, and as to all costs, expenses, and attorneys' fees of such Persons related thereto, the liability of all affected Obligors automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

15.25 **Acknowledgement of and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by (a) the application of any Write-Down and Conversion Powers by an applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any Lender that is an Applicable Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Applicable Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

15.26 **Certain ERISA Matters.**

(a) Status. Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR §2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with such Lender’s entrance into, participation in, administration of and performance in respect of any Loans, Letters of Credit or Commitments; or

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance in respect of any Loans, Letters of Credit or Commitments and this Agreement; or

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform in respect of any Loans, Letters of Credit or Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance in respect of any Loans, Letters of Credit or Commitments and this Agreement satisfies the requirements of subsections (b) through (g) of Part I of PTE 84-14, and (D) to the knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of any Loans, Letters of Credit, Commitments or this Agreement.

(b) No Fiduciary. In addition, unless clause (i) in **Section 15.26(a)** is true with respect to a Lender, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that none of Administrative Agent or any of its Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by Administrative Agent under this Agreement, any other Loan Document or any documents related to hereto or thereto).

15.27 **[Reserved]**.

15.28 **Section Headings**. Section headings used herein and in the other Loan Documents are included herein for convenience of reference only and shall not constitute a part hereof or thereof for any other purpose or be given any substantive effect.

15.29 **Qualified Financial Contracts.** As used in this Section, the following terms have the following meanings: (i) “**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party; (ii) “**Covered Entity**” means any of the following: (A) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b); (B) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (C) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b); (iii) “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and (iv) “**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D). To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**,” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the United States or any other State or other jurisdiction of the United States): In the event that a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in Property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in Property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

15.30 **Term Loan Intercreditor Agreement.** Administrative Agent and the Collateral Agent are hereby authorized by the Lenders to enter into the Term Loan Intercreditor Agreement, and the parties hereto acknowledge that the Term Loan Intercreditor Agreement is binding upon them. Each Lender (a) hereby consents to the subordination of the Liens on the Term Priority Collateral (as defined in the Term Loan Intercreditor Agreement) securing the Obligations on the terms set forth in the Term Loan Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Term Loan Intercreditor Agreement and (c) hereby authorizes and instructs Administrative Agent and Collateral Agent to enter into the Term Loan Intercreditor Agreement and to subject the Liens on the Collateral securing the Obligations to the provisions thereof. The foregoing provisions are intended as an inducement to the Term Loan Secured Parties (as such term is defined in the Term Loan Intercreditor Agreement) to extend credit to the Credit Parties and such Term Loan Secured Parties are intended third-party beneficiaries of such provisions and the provisions of the Term Loan Intercreditor Agreement.

[Remainder of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

BORROWERS:

AUTHENTIC BRANDS LLC

By: _____
Name:
Title:

BLACK RIFLE COFFEE COMPANY LLC
GOOD BEANS LLC
BRCC GC LLC
FREE RANGE AMERICAN MEDIA COMPANY LLC
SIGNAL MOUNTAIN MEDIA WORKS LLC
1144 SLC LLC
BRCC OPERATING COMPANY LLC
SPENCER 355 LLC
621 MANCHESTER LLC
BRCC GC LLC
GROUNDS AND HOUNDS COFFEE COMPANY LLC
INDEPENDENT COFFEE SOLUTIONS LLC
BRCC COPPERFIELD LLC

By: _____
Name:
Title:

Signature Page to Credit Agreement

ADMINISTRATIVE AGENT,
COLLATERAL AGENT, LC ISSUER,
AND LENDER:

PNC BANK, NATIONAL ASSOCIATION

By: _____

Name:

Title:

Signature Page to Credit Agreement

APPENDIX A
LENDERS, COMMITMENTS AND COMMITMENT PERCENTAGES

<u>Lender</u>	<u>Revolving Commitment</u>	<u>Revolving Commitment Percentage</u>
PNC Bank, National Association	\$75,000,000	100.00000000%
Totals	\$75,000,000	100.00000000%

FINANCING AGREEMENT

Dated as of December 27, 2024

by and among

GOOD BEANS LLC

and

BLACK RIFLE COFFEE COMPANY LLC

as Borrowers,

AUTHENTIC BRANDS LLC,

as Parent,

THE GUARANTORS FROM TIME TO TIME PARTY HERETO,

**THE LENDERS FROM TIME TO TIME PARTY HERETO,
as Lenders,**

and

**BLUE TORCH FINANCE LLC,
as Administrative Agent and Collateral Agent**

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE, THE TERM LOANS ARE BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. REQUESTS FOR INFORMATION REGARDING THE ORIGINAL ISSUE DISCOUNT ON THE TERM LOANS MAY BE DIRECTED TO ALTER DOMUS AT BLUETORCHAGENCY@ALTERDOMUS.COM.

Table of Contents

	Page
ARTICLE I DEFINITIONS; CERTAIN TERMS	1
Section 1.01. Definitions	1
Section 1.02. Terms Generally	56
Section 1.03. Certain Matters of Construction	56
Section 1.04. Accounting and Other Terms	57
Section 1.05. Time References	58
Section 1.06. Rates	58
Section 1.07. Certain Calculations and Tests	59
Section 1.08. Divisions	59
ARTICLE II THE LOANS	59
Section 2.01. Commitments	59
Section 2.02. Making the Loans	60
Section 2.03. Repayment of Loans; Evidence of Debt	61
Section 2.04. Interest	62
Section 2.05. Reduction of Commitment; Prepayment of Loans	62
Section 2.06. Fees	66
Section 2.07. SOFR Option; Suspension of SOFR Option; Benchmark Transition	67
Section 2.08. Funding Losses	71
Section 2.09. Taxes	71
Section 2.10. Increased Costs and Reduced Return	75
Section 2.11. Incremental Term Loans	77
ARTICLE III INTENTIONALLY OMITTED	79
ARTICLE IV APPLICATION OF PAYMENTS; DEFAULTING LENDERS; JOINT AND SEVERAL LIABILITY OF BORROWERS	80
Section 4.01. Payments; Computations and Statements	80
Section 4.02. Sharing of Payments	80
Section 4.03. Apportionment of Payments	80
Section 4.04. Defaulting Lenders	81
Section 4.05. Administrative Borrower; Joint and Several Liability of the Borrowers	82
ARTICLE V CONDITIONS TO LOANS	84
Section 5.01. Conditions Precedent to Effectiveness	84
Section 5.02. Conditions Precedent to All Loans	87
Section 5.03. Conditions Subsequent to Effectiveness	87
ARTICLE VI REPRESENTATIONS AND WARRANTIES	88
Section 6.01. Representations and Warranties	88
ARTICLE VII COVENANTS OF THE LOAN PARTIES AND OTHER COLLATERAL MATTERS	97
Section 7.01. Affirmative Covenants	97
Section 7.02. Negative Covenants	107
Section 7.03. Financial Covenants	112

ARTICLE VIII CASH MANAGEMENT ARRANGEMENTS AND OTHER COLLATERAL MATTERS	113
Section 8.01. Cash Management Arrangements	113
ARTICLE IX EVENTS OF DEFAULT	114
Section 9.01. Events of Default	114
Section 9.02. Cure Right	118
ARTICLE X AGENTS	119
Section 10.01. Appointment	119
Section 10.02. Nature of Duties; Delegation	119
Section 10.03. Rights, Exculpation, Etc.	120
Section 10.04. Reliance	121
Section 10.05. Indemnification	121
Section 10.06. Agents Individually	121
Section 10.07. Successor Agent	121
Section 10.08. Collateral Matters	122
Section 10.09. Agency for Perfection	124
Section 10.10. No Reliance on any Agent's Customer Identification Program	124
Section 10.11. No Third Party Beneficiaries	125
Section 10.12. No Fiduciary Relationship	125
Section 10.13. Reports; Confidentiality; Disclaimers	125
Section 10.14. Collateral Custodian	126
Section 10.15. Intercreditor Agreement	126
Section 10.16. Collateral Agent May File Proofs of Claim	126
Section 10.17. Erroneous Payments	127
ARTICLE XI GUARANTY	129
Section 11.01. Guaranty	129
Section 11.02. Guaranty Absolute	129
Section 11.03. Waiver	130
Section 11.04. Continuing Guaranty; Assignments	131
Section 11.05. Subrogation	131
Section 11.06. Contribution	132
ARTICLE XII MISCELLANEOUS	132
Section 12.01. Notices, Etc.	132
Section 12.02. Amendments, Etc.	134
Section 12.03. No Waiver; Remedies, Etc.	136
Section 12.04. Expenses; Taxes; Attorneys' Fees	137
Section 12.05. Right of Set-off	138
Section 12.06. Severability	138
Section 12.07. Assignments and Participations	138
Section 12.08. Counterparts	142
Section 12.09. Governing Law	143
Section 12.10. Consent to Jurisdiction; Service of Process and Venue	143
Section 12.11. Waiver of Jury Trial, Etc.	144
Section 12.12. Consent by the Agents and Lenders	144
Section 12.13. No Party Deemed Drafter	144

Section 12.14. Reinstatement; Certain Payments	144
Section 12.15. Indemnification; Limitation of Liability for Certain Damages	145
Section 12.16. Records	146
Section 12.17. Binding Effect	146
Section 12.18. Highest Lawful Rate	146
Section 12.19. Confidentiality	147
Section 12.20. Public Disclosure	148
Section 12.21. Integration	148
Section 12.22. USA PATRIOT Act	148
Section 12.23. Acknowledgement and Consent to Bail-In of Affected Financial Institutions	149

SCHEDULE AND EXHIBITS

Schedule 1.01(A)	Lenders and Lenders' Commitments
Schedule 1.01(B)	Facilities; Fee Owned Real Estate; Mortgages
Schedule 1.01(C)	Immaterial Subsidiaries
Schedule 6.01(e)	Capitalization; Subsidiaries
Schedule 6.01(f)	Litigation
Schedule 6.01(i)	ERISA
Schedule 6.01(l)	Nature of Business
Schedule 6.01(q)	Environmental Matters
Schedule 6.01(p)	Employee and Labor Matters
Schedule 6.01(r)	Insurance
Schedule 6.01(u)	Intellectual Property
Schedule 6.01(v)	Material Contracts
Schedule 7.02(a)	Existing Liens
Schedule 7.02(b)	Existing Indebtedness
Schedule 7.02(e)	Existing Investments
Schedule 7.02(k)	Limitations on Dividends and Other Payment Restrictions
Schedule 7.02(i)	Transactions with Affiliates
Schedule 8.01	Cash Management Accounts

Exhibit A	Form of Joinder Agreement
Exhibit B	Form of Assignment and Acceptance
Exhibit C	Form of Notice of Borrowing
Exhibit D	Form of SOFR Notice
Exhibit E	Form of Compliance Certificate
Exhibit 2.09(d)	Forms of U.S. Tax Compliance Certificate

FINANCING AGREEMENT

Financing Agreement, dated as of December 27, 2024, by and among AUTHENTIC BRANDS LLC, a Delaware limited liability company (the “Parent”), GOOD BEANS LLC, a Delaware limited liability company, and BLACK RIFLE COFFEE COMPANY, LLC, a Delaware limited liability company (each a “Borrower” and collectively, the “Borrowers”), each subsidiary of the Parent listed as a “Guarantor” on the signature pages hereto (together with the Parent and each other Person that executes a joinder agreement and becomes a “Guarantor” hereunder, each a “Guarantor” and collectively, the “Guarantors”), the lenders from time to time party hereto (each a “Lender” and collectively, the “Lenders”), Blue Torch Finance LLC, a Delaware limited liability company (“Blue Torch”), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the “Collateral Agent”), and Blue Torch, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the “Administrative Agent” and together with the Collateral Agent, each an “Agent” and collectively, the “Agents”).

RECITALS

The Borrowers have asked the Lenders to extend credit to the Borrowers consisting of an initial term loan in the aggregate principal amount of \$40,000,000. The proceeds of the initial term loan shall be used to refinance certain existing indebtedness of the Borrowers and to pay fees and expenses related to this Agreement (collectively, the “Transactions”) and for general corporate purposes. The Lenders are severally, and not jointly, willing to extend such credit to the Borrowers subject to the terms and conditions hereinafter set forth.

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

ARTICLE I

DEFINITIONS; CERTAIN TERMS

Section 1.01. Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

“ABL Agent” means the administrative agent and collateral agent under the ABL Credit Agreement (together with its successors and assigns in such capacity).

“ABL Credit Agreement” means the Credit Agreement, dated as of August 10, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and the Intercreditor Agreement), among the Borrowers and the other Loan Parties party thereto, the lenders party thereto and the ABL Agent.

“ABL Debt” means the Indebtedness from time to time outstanding under the ABL Credit Agreement.

“ABL Facility” means the commitments and the extensions of credit made under the ABL Facility Documents.

“ABL Facility Documents” means the ABL Credit Agreement and the other “Loan Documents,” as defined in the ABL Credit Agreement.

“ABL Priority Collateral” has the meaning assigned to such term in the Intercreditor Agreement.

“Account” has the meaning assigned to such term in Article 9 of the UCC.

“Account Debtor” means, with respect to any Person, each debtor, customer or obligor in any way obligated on or in connection with any Account of such Person.

“Acquisition” means the acquisition (whether by means of a merger, consolidation or otherwise) of all of the Equity Interests of any Person or all or substantially all of the assets of (or any division or business line of) any Person.

“Action” has the meaning specified therefor in Section 12.12.

“Additional Amount” has the meaning specified therefor in Section 2.09(a).

“Adjusted Term SOFR” means, for purposes of any calculation, the rate per annum equal to Term SOFR for such calculation.

“Administrative Agent” has the meaning specified therefor in the preamble hereto.

“Administrative Agent's Accounts” means one or more accounts designated by the Administrative Agent at a bank designated by the Administrative Agent from time to time as the accounts into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents and the Lenders under this Agreement and the other Loan Documents.

“Administrative Borrower” has the meaning specified therefor in Section 4.05.

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

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any Agent or any Lender be considered an “Affiliate” of any Loan Party.

“Agent” and “Agents” have the respective meanings specified therefor in the preamble hereto.

“Agreement” means this Financing Agreement, including all amendments, restatements, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to this Agreement as the same may be in effect at the time such reference becomes operative.

“Amortization Amount” means, in respect of any payment made pursuant to Section 2.03(a)(i), an aggregate principal amount equal to (i) \$250,000 (representing 0.625% of the Initial Term Loans outstanding on the Effective Date), if such payment is made on or prior to the first anniversary of the Effective Date, and (ii) \$500,000 (representing 1.25% of the Initial Term Loans outstanding on the Effective Date), if such payment is made on any date thereafter.

“Anti-Corruption Laws” means all Requirements of Law concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), the UK Bribery Act of 2010, and all other anti-bribery and anti-corruption laws and regulations of those jurisdictions in which the Loan Parties or any of their Subsidiaries do business.

“Anti-Money Laundering Laws” means all Requirements of Law concerning or relating to terrorism or money laundering, including the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956-1957), the USA PATRIOT Act and the Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5314, 5316-5336 and 12 U.S.C. §§ 1951-1960) and the rules and regulations thereunder, and any law prohibiting or directed against the financing or support of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B).

“Applicable ECF Percentage” means 75%; provided that if the Total Net Leverage Ratio as of the last day of the most recently ended Fiscal Year for which the annual financial statements and a certificate of an Authorized Officer of the Parent are received by the Administrative Agent and the Lenders in accordance with Section 7.01(a)(iii) and Section 7.01(a)(iv) is (a) less than or equal to 3.50 to 1.00 but greater than 2.50 to 1.00, such percentage shall be 50%, (b) less than or equal to 2.50 to 1.00 but greater than 1.50 to 1.00, such percentage shall be 25% and (c) less than or equal to 1.50 to 1.00, such percentage shall be 0%.

“Applicable Margin” means, as of any date of determination:

(a) From the Effective Date until the quarterly financial statements and a certificate of an Authorized Officer of the Parent are received by the Administrative Agent in accordance with Section 7.01(a)(ii) and Section 7.01(a)(iv) for the fiscal quarter ending June 30, 2025 (the “Initial Applicable Margin Period”), the relevant Applicable Margin shall be set at Level I in the table below.

(b) After the Initial Applicable Margin Period, the relevant Applicable Margin shall be set at the respective level indicated below based upon the Total Net Leverage Ratio set forth opposite thereto, which ratio shall be calculated as of the end of the most recent fiscal quarter of the Parent and its Subsidiaries for which quarterly financial statements and a certificate of an Authorized Officer of the Parent are received by the Administrative Agent in accordance with Section 7.01(a)(ii) and Section 7.01(a)(iv):

Level	Total Net Leverage Ratio	Reference Rate Loans	SOFR Loans
I	Greater than 1.50:1.00	5.50%	6.50%
II	Less than or equal to 1.50:1.00	5.00%	6.00%

(c) Subject to clause (d) below, the adjustment of the Applicable Margin (if any) will occur two Business Days after the date the Administrative Agent receives the quarterly financial statements and a certificate of an Authorized Officer of the Parent in accordance with Section 7.01(a)(ii) and Section 7.01(a)(iv).

(d) Notwithstanding the foregoing:

(i) the Applicable Margin shall be set at Level I in the table above (x) upon the occurrence and during the continuation of a Default or Event of Default, or (y) if for any period, the Administrative Agent does not receive the financial statements and certificates described in clause (c) above, for the period commencing on the date such financial statements and certificate were required to be delivered through the date on which such financial statements and certificate are actually received by the Administrative Agent and the Lenders; and

(ii) in the event that any financial statement or certificate described in clause (c) above is inaccurate (regardless of whether this Agreement or any Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any fiscal period, then the Applicable Margin for such fiscal period shall be adjusted retroactively (to the effective date of the determination of the Applicable Margin that was based upon the delivery of such inaccurate financial statement or certificate) to reflect the correct Applicable Margin, and the Borrowers shall promptly make payments to the Agents and the Lenders to reflect such adjustment. This clause shall not limit the rights of the Administrative Agent or the Lenders with respect to Section 2.04(b) and Article IX, and shall survive the termination of this Agreement.

“Applicable Premium” means

(a) as of the date of the occurrence of any Applicable Premium Trigger Event specified in clause (b), (c) or (d) of the definition thereof:

(i) during the period from (and including) the Effective Date until (but excluding) the first anniversary of the Effective Date (the “First Period”), an amount equal to the Make-Whole Amount;

(ii) during the period from (and including) the first anniversary of the Effective Date until (but excluding) the second anniversary of the Effective Date (the “Second Period”), an amount equal to 2.00% times the aggregate principal amount of the Term Loans outstanding on the date of such Applicable Premium Trigger Event;

(iii) during the period from (and including) the second anniversary of the Effective Date until (but excluding) the third anniversary of the Effective Date (the “Third Period”), an amount equal to 1.00% times the aggregate principal amount of the Term Loans outstanding on the date of such Applicable Premium Trigger Event; and

(iv) at any time after the end of the Third Period, zero; and

(b) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (a) of the definition thereof:

(i) during the First Period, an amount equal to the Make-Whole Amount;

(ii) during the Second Period, an amount equal to 2.00% times the aggregate principal amount of the Term Loans being paid on such date;

and

(iii) during the Third Period, an amount equal to 1.00% times the aggregate principal amount of the Term Loans being paid on such date;

and

(iv) at any time after the end of the Third Period, zero.

“Applicable Premium Trigger Event” means:

(a) any payment by any Loan Party of all, or any part, of the principal balance of any Term Loan for any reason (including any optional prepayment or mandatory prepayment other than (x) any prepayment made pursuant to Section 2.05(c)(i) or (iv) and (y) any regularly scheduled amortization payment made pursuant to Section 2.03(a)) whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations;

(b) the acceleration of the Obligations for any reason, including acceleration in accordance with Section 9.01, including as a result of the commencement of any Insolvency Proceeding;

(c) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any Insolvency Proceeding, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any Insolvency Proceeding to any Agent or the Lenders in full or partial satisfaction of the Obligations; or

(d) the termination of this Agreement for any reason.

“Applicable Tax Percentage” means the highest effective marginal combined rate of federal, state, and local income taxes (taking into account the deductibility of state and local taxes for federal income tax purposes) to which any Person directly or indirectly holding Equity Interests of a Loan Party would be subject in the relevant year of determination, taking into account only such Person’s share of income and deductions attributable to its equity ownership interest in such Loan Party.

“Asset Sales Proceeds Account” shall have the meaning assigned to such term in the Intercreditor Agreement.

“Assignment and Acceptance” means an assignment and acceptance entered into by an assigning Lender and an assignee, and accepted by the Administrative Agent (and the Collateral Agent, if applicable), in accordance with Section 12.07 hereof and substantially in the form of Exhibit B hereto or such other form acceptable to the Administrative Agent.

“Authorized Officer” means, with respect to any Person, the chief executive officer, chief operating officer, chief financial officer, controller, director, president, treasurer or other financial officer performing similar functions, president or executive vice president of such Person.

“Availability” means, at any time, the amount available to be borrowed under the ABL Credit Agreement on such date plus the amount of the “Availability Block” (as such term is defined in the ABL Credit Agreement on the Effective Date) in effect thereunder from time to time; provided that if the ABL Agent has delivered written notice to the Parent, the Borrowers or any of the other borrowers under the ABL Credit Agreement of the existence and continuance of any default or event of default under the ABL Credit Agreement, then “Availability” shall be deemed to be \$0 unless or until such default or event of default is cured or waived by the ABL Agent.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.07(h).

“Average ABL Exposure” means, as of any date of determination, the Aggregate Revolving Obligations (as such term and any component definition thereof are defined in the ABL Agreement as in effect on the Effective Date) outstanding at the end of each of the immediately preceding 30 days divided by 30.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” means Title 11 of the United States Code, as amended from time to time and any successor statute or any similar federal or state law for the relief of debtors.

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.07(h)(i).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Administrative Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark 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 benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated credit facilities at such time and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment for each applicable Interest Period, 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 Administrative 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 such Benchmark 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 such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

“Benchmark Unavailability Period” means, the period (if any) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.07(h) and ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.07(h).

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

“Blue Torch” has the meaning specified therefor in the preamble hereto.

“Board” means the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Board of Directors” means with respect to (a) any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) a partnership, the board of directors, board of managers or equivalent governing body of the general partner of the partnership, (c) a limited liability company, the managing member or members or any controlling committee, board of directors or board of managers (or equivalent governing body) of such company or the sole member or the managing member thereof, and (d) any other Person, entity, individual, board or committee of such Person serving a similar function.

“Borrower” and “Borrowers” have the meanings specified therefor in the preamble hereto.

“Borrowing” means Loans of the same Type made, converted or continued on the same date and, in the case of SOFR Loans, as to which a single Interest Period is in effect.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in New York, except that, if a determination of a Business Day shall relate to a SOFR Loan, the term “Business Day” also shall exclude any day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Capital Expenditures” means, for any period, the aggregate cost of all capital assets acquired by the Borrowers and their Subsidiaries during such period (including gross leases to be capitalized under GAAP and leasehold improvements), as determined in accordance with GAAP.

“Capitalized Lease” means, with respect to any Person, any lease of (or other arrangement conveying the right to use) real or personal property by such Person as lessee that is required under GAAP (subject to Section 1.04) to be capitalized on the balance sheet of such Person.

“Capitalized Lease Obligations” means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Equivalents” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within one year from the date of acquisition thereof; (b) commercial paper, maturing not more than one year after the date of issue rated P 1 by Moody’s or A 1 by Standard & Poor’s; (c) certificates of deposit maturing not more than one year after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$100,000,000; (d) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (c) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof; (e) money market accounts maintained with mutual funds having assets in excess of \$500,000,000, which assets are primarily comprised of Cash Equivalents described in another clause of this definition; and (f) marketable tax exempt securities rated A or higher by Moody’s or A+ or higher by Standard & Poor’s, in each case, maturing within one year from the date of acquisition thereof.

“Cash Management Accounts” means the bank accounts of each Loan Party maintained at one or more Cash Management Banks listed on Schedule 8.01.

“Cash Management Bank” has the meaning specified therefor in Section 8.01(a).

“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, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy 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 shall, in each case, be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

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

(a) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, of beneficial ownership of more than 50% of the Equity Interests entitled to vote for members of the board of directors or other equivalent governing body of Holdings on a fully-diluted basis;

(b) the failure of Holdings for any reason to be the sole managing member of the Parent and to Control the Parent in such capacity;

(c) the Parent shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting or economic power of the Equity Interests of (i) each Borrower and (ii) each other Loan Party (other than resulting from (x) the sale or other disposition of 100% of the Equity Interests of a Loan Party, (y) the dissolution of a Loan Party or (z) the merger of a Loan Party with and into another Loan Party, in each case, that is expressly permitted under this Agreement); or

(d) any “change of control” (or any comparable term or provision) under or with respect to any of the Equity Interests of the Parent or any of its Subsidiaries or any agreement or indenture relating to any Funded Indebtedness exceeding \$2,500,000.

“Class”, when used in reference to any Loan, refers to whether such Loan is a Term Loan or Other Term Loan and, when used in reference to any Commitment, refers to whether such Commitment is an Initial Term Loan Commitment or Incremental Term Loan Commitment.

“Collateral” means, collectively, (a) all “Collateral” as defined in the Security Agreement and (b) all of the property and assets and all interests therein and proceeds thereof now owned or hereafter acquired by any Person upon which a Lien is granted or purported to be granted by such Person as security for all or any part of the Obligations.

“Collateral Agent” has the meaning specified therefor in the preamble hereto.

“Collateral Agent Advances” has the meaning specified therefor in Section 10.08(a).

“Collateral Document” has the meaning specified therefor in Section 12.02(b).

“Collections” means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

“Commitments” means, with respect to each Lender, such Lender’s Initial Term Loan Commitment and Incremental Term Loan Commitment.

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

“Compliance Certificate” means a Compliance Certificate, substantially in the form of Exhibit E, duly executed by an Authorized Officer of the Parent.

“Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Reference Rate,” the definition of “Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.08 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Consolidated EBITDA” means, with respect to any Person for any period:

(a) the Consolidated Net Income of such Person for such period,

plus

(b) without duplication, the sum of the following amounts (determined in accordance with GAAP, as applicable) for such period to the extent deducted (and not added back) in the calculation of Consolidated Net Income (other than in respect of clauses (viii)(A) and (ix)) for such period:

(i) all Taxes (net of income tax credits) measured by income and the provision for United States federal, state, local and foreign income taxes or taxes on profit or capital, including state, franchise and similar taxes and withholding taxes,

(ii) Consolidated Interest Expense,

(iii) any depreciation and amortization expense (including amortization of intangible assets, including goodwill and lease assets),

(iv) any aggregate net loss (less, even if it results in a negative number, gains) on the Disposition of property (other than accounts and Inventory) outside the ordinary course of business,

(v) any extraordinary (as such term was defined under GAAP prior to giving effect to FASB 2015-01), nonrecurring or unusual costs, charges, expense or losses (including litigation and settlement costs and expenses), in each case, that are reasonably identifiable and factually supportable in the Borrowers’ good faith judgement; provided that the aggregate amount added back to Consolidated EBITDA pursuant to this clause (b)(v) for such test period, when combined with the aggregate amount added back to Consolidated EBITDA pursuant to clauses (b)(viii) and (b)(xiv) below for such period, shall not exceed the greater of (A) \$5,000,000 and (B) 20.0% of Consolidated EBITDA for such four fiscal quarter period (calculated before giving effect to this clause (b)(v) and the adjustments under clauses (b)(viii) and (b)(xiv) below) (the “Shared Cap”);

(vi) any other non-cash expenditure, charge or loss for such period (other than any non-cash expenditure, charge or loss to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period),

(vii) fees, costs and expenses incurred in connection with (A) the Transactions, any amendments, modifications or waivers of the Loan Documents after the Effective Date, and (B) any Permitted Acquisitions or other Permitted Investments, permitted issuances of any Indebtedness or Equity Interests or Permitted Dispositions, in each case, whether or not consummated; provided that the aggregate amount added back to Consolidated EBITDA pursuant to this clause (b)(vii) in respect of any unconsummated Acquisitions, Investments, issuances of Indebtedness or Equity Interests or Dispositions, in each case, that would have been permitted under this Agreement if so consummated, shall not exceed \$1,000,000 for any period of four consecutive fiscal quarters,

(viii) to the extent not already included in the determination of Consolidated Net Income, (A) pro forma “run rate” cost savings, operating expense reductions, operating improvements and cost synergies that result (or that are expected in good faith to result in the following twelve months, net of the amount of actual benefits realized from such actions during such period) from the Transactions, Permitted Acquisitions, Permitted Dispositions, recapitalizations, other similar transactions, operating improvements or changes, restructurings, cost-savings and similar initiatives, plans or other actions; provided, in each case, that (x) such cost savings, operating expense reductions, operating improvements and synergies are reasonably identifiable, factually supportable and reasonably attributable to the actions specified and (y) such actions have been taken, and (B) all restructuring costs, integration costs, expenses and losses relating to the undertaking of cost-saving initiatives, operating expense reductions and other synergies and similar initiatives, retention, recruiting, relocation and signing bonuses and expenses or severance costs and other similar transaction costs, costs associated with implementation of enterprise-wide resource planning system, product and site development costs and any one-time expense relating to enhanced accounting function or other similar transaction costs; provided that the aggregate amount added back to Consolidated EBITDA pursuant to this clause (b)(viii) for such test period, when combined with the aggregate amount added back to Consolidated EBITDA pursuant to clauses (b)(v) above and (b)(xiv) below for such period, shall not exceed the Shared Cap,

(ix) proceeds of business interruption insurance policies and cyber insurance policies actually received in cash in an amount representing the earnings for the applicable period that such proceeds are intended to replace,

(x) all non-cash costs or expenses (less non-cash gains or income) incurred pursuant to any management equity plan or stock option plan, share-based incentive compensation plan or any other management or employee benefit plan or arrangement, pension plan, any stock subscription or stockholders agreement or any distributor equity plan or agreement, including any non-cash charges arising from the grant or settlement of virtual stock option programs, stock appreciation or similar rights,

(xi) losses, expenses and payments that are covered by indemnification, reimbursement, guaranty or purchase price adjustment provisions in any agreement entered into by the Parent or any of its Subsidiaries (A) in such period, to the extent such losses, expenses and payments have been actually reimbursed in the current period in cash pursuant to the applicable third-party insurance, indemnity, guaranty or acquisition agreement or (B) in an earlier period, to the extent such losses, expenses and payments were actually reimbursed in the current period in cash pursuant to the applicable third-party insurance, indemnity, guaranty or acquisition agreement and not added back to Consolidated EBITDA in such earlier period,

(xii) effects of non-cash adjustments (including the effects of such adjustments pushed down to the Parent and its Subsidiaries) in such Person's consolidated financial statements pursuant to GAAP (including in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition or the amortization or write-off of any amounts thereof (other than any purchase accounting adjustments related to above-market leases),

(xiii) losses in connection with foreign currency exchanges, and

(xiv) the amount of any one-time restructuring charge or reserve including, in connection with (A) Permitted Acquisitions after the Closing Date and (B) the consolidation or closing of facilities and written-off site development costs; provided that the aggregate amount added back to Consolidated EBITDA pursuant to this clause (xiv) for such test period, when combined with the aggregate amount added back to Consolidated EBITDA pursuant to clauses (b)(v) and (b)(viii) above for such period, shall not exceed the Shared Cap;

minus

(c) without duplication, the sum of the following amounts for such period to the extent included in the calculation of such Consolidated Net Income for such period:

- (i) any credit for United States federal income taxes or other taxes measured by net income,
- (ii) any gain from extraordinary (as such term was defined under GAAP prior to giving effect to FASB 2015-01), unusual or nonrecurring items,
- (iii) any aggregate net gain from the Disposition of property (other than accounts and Inventory) outside the ordinary course of business,
- (iv) gains in connection with foreign currency exchanges, and
- (v) any other non-cash gains (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash items in any prior period), and
- (vi) any cash payments made during such period in respect of non-cash expenses described in clauses (b)(vi) and (b)(x) above that were added back in a prior period,

in each case, where applicable, determined on a consolidated basis in accordance with GAAP.

Notwithstanding the foregoing, (x) Consolidated EBITDA for any period shall be reduced by the aggregate carrying value of any charitable donations of cash or other property made during such period to the extent that such amount is not otherwise deducted from Consolidated Net Income or Consolidated EBITDA in accordance with the definitions thereof and (y) Consolidated EBITDA for the fiscal quarters listed below shall be the amounts set forth opposite such fiscal quarters listed below, subject to any pro forma adjustments for events occurring after the Effective Date in accordance with Section 1.07:

<u>Fiscal Quarter Ending:</u>	<u>Consolidated EBITDA:</u>
December 31, 2023	\$12,147,000
March 31, 2024	\$14,125,000
June 30, 2024	\$8,450,000
September 30, 2024	\$7,104,000

“Consolidated Net Income” means, with respect to any Person, for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period; provided that the following shall be excluded: (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third-party (which interest does not cause the net income of such other Person to be consolidated into the net income of such Person), except to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions (to the extent of such restriction or limitation), except to the extent of the amount of dividends or distributions paid to such Person, and (c) subject to Section 1.07, the net income of any other Person arising prior to such other Person becoming a Subsidiary of such Person or merging or consolidating into such Person or its Subsidiaries.

“Consolidated Interest Expense” means, with respect to any Person for any period, interest expense of such Person and its Subsidiaries for such period determined on a consolidated basis and in accordance with GAAP.

“Contingent Indemnity Obligations” means any Obligation constituting a contingent, unliquidated indemnification obligation of any Loan Party, in each case, to the extent (a) such obligation has not accrued and is not yet due and payable and (b) no claim has been made or is reasonably anticipated to be made with respect thereto.

“Contingent Obligation” means, with respect to any Person, any obligation of such Person guaranteeing or intending to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, and (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided that the term “Contingent Obligation” shall not include any product warranties extended in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means, with respect to any Person, the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Control Agreement” means, with respect to any deposit account, any securities account, commodity account, securities entitlement or commodity contract, an agreement, among the Collateral Agent or the ABL Agent (subject to the Intercreditor Agreement), the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account, effective to grant “control” (as defined under the applicable UCC) over such account to the Collateral Agent or the ABL Agent (subject to the Intercreditor Agreement), and otherwise in form and substance satisfactory to the Collateral Agent and the ABL Agent.

“Cure Right” has the meaning specified therefor in Section 9.02.

“Debtor Relief Law” means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, restructuring or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

“Default” means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Administrative Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Administrative Borrower, or the Administrative Agent in writing that it does not intend to comply with its prospective funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Administrative Borrower, to confirm in writing to the Administrative Agent and the Administrative Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Administrative Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action. Notwithstanding anything to the contrary herein, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Administrative Borrower and each Lender.

“Disbursement Letter” means a disbursement letter executed and delivered by the Borrower, in form and substance satisfactory to the Collateral Agent, and the related funds flow memorandum describing the sources and uses of all cash payments in connection with the transactions contemplated to occur on the Effective Date.

“Disposition” means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, “Disposition” shall include (a) the sale or other disposition for value of any contracts, (b) any disposition of property through a plan of division under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, (c) the early termination or modification of any contract resulting in the receipt by any Loan Party or any Subsidiary of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification), (c) any sale of merchant accounts (or any rights thereto (including any rights to any residual payment stream with respect thereto)) by any Loan Party or any Subsidiary, (d) any Sale and Leaseback Transaction, and (e) any transfer, exchange or other disposition of property or assets pursuant to any barter, trade or similar arrangement.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable) (a) matures or is mandatorily redeemable (other than solely for Equity Interests of such Person that are not Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations and the termination of the Commitments), (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d), prior to the date that is 91 days after the Final Maturity Date; provided that if such Equity Interest is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Affiliates or family members or any permitted transferees thereof) of a Loan Party or its Subsidiaries or any parent thereof, such Equity Interest will not constitute a Disqualified Equity Interest solely because it may be required to be repurchased or redeemed by a Loan Party or a Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s, consultant’s or independent contractor’s termination, death or disability.

“Dollar,” “Dollars” and the symbol “\$” each means lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

“ECF Threshold Amount” means \$1,000,000.

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

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

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

“Effective Date” has the meaning specified therefor in Section 5.01.

“Eligible Real Property” means any parcel of real property (and improvements thereon) owned by any Loan Party with a fair market value of at least \$2,500,000.

“Employee Plan” means an employee benefit plan within the meaning of Section 3(3) of ERISA (other than a Multiemployer Plan), regardless of whether subject to ERISA, that any Loan Party or any of its ERISA Affiliates maintains, sponsors or contributes to or is obligated to contribute to or otherwise has any liability.

“Environmental Claim” means any action, suit, complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication, from any Person or Governmental Authority relating to or arising out of any threatened, alleged or actual (a) violation of, non-compliance with, or liability under, any Environmental Law, or (b) the manufacture, use, handling, processing, distribution, labeling, generation, transportation, storage, treatment, Release, threatened Release, disposal or arranging for the disposal of, or exposure to, any Hazardous Materials.

“Environmental Law” means any Requirement of Law relating to, regulating or governing (i) the pollution or protection of the environment, any environmental media, natural resources, human health or safety, or (ii) the manufacture, use, handling, processing, distribution, labeling, generation, transportation, storage, treatment, Release, threatened Release, disposal or arranging for the disposal of, or exposure to, any Hazardous Materials.

“Environmental Liability” means all liabilities (contingent or otherwise, known or unknown), monetary obligations, losses (including monies paid in settlement), damages, natural resource damages, costs and expenses (including all reasonable and documented fees, costs, client charges and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest arising directly or indirectly as a result of, from, or based upon (a) any Environmental Claim, (b) any actual violation of or non-compliance with any Environmental Law or Environmental Permit, (c) any actual Release of, or exposure to, Hazardous Materials, (d) any Remedial Action, or (e) any contract, agreement or other arrangement pursuant to which liability is assumed or imposed contractually or by operation of law with respect to any of the foregoing clauses (a) through (d).

“Environmental Lien” means any Lien in favor of any Governmental Authority arising out of any Environmental Liability.

“Environmental Permit” means any permit, license, authorization, approval, registration or entitlement required by or issued pursuant to any Environmental Law or by any Governmental Authority pursuant to Environmental Law.

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

“Equity Issuance” means either (a) the sale or issuance by any Loan Party or any of its Subsidiaries of any shares of its Equity Interests or (b) the receipt by the Parent of any cash capital contributions.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

“ERISA Affiliate” means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member and which would be deemed to be a “controlled group” or under “common control” within the meaning of Sections 414(b), (c), (m) or (o) of the Internal Revenue Code or Sections 4001(a)(14) or 4001(b)(1) of ERISA.

“ERISA Event” means (a) the occurrence of a Reportable Event with respect to any Pension Plan; (b) the failure to meet the minimum funding standards of Section 412 or 430 of the Internal Revenue Code or Section 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA) or the failure to make a contribution or installment required under Section 412 or Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) a determination that any Pension Plan is, or is expected to be, in “at risk” status (as defined in Section 430 of the Internal Revenue Code or Section 303 of ERISA); (d) a determination that any Multiemployer Plan is, or is expected to be, in “critical” or “endangered” status under Section 432 of the Internal Revenue Code or Section 305 of ERISA; (e) the filing of a notice of intent to terminate a Pension Plan or the treatment of an amendment to a Pension Plan as a termination under Section 4041 of ERISA; (f) the withdrawal by any Loan Party or any of its ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to any Loan Party or any of its ERISA Affiliates pursuant to Section 4063 or 4064 of ERISA; (g) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition that might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the imposition of liability on any Loan Party or any of its ERISA Affiliates pursuant to Section 4062(e) or 4069(a) of ERISA or by reason of the application of Section 4212(c) of ERISA; (i) the withdrawal of any Loan Party or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan or the receipt by any Loan Party or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is insolvent pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (j) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any of its ERISA Affiliates of fines, penalties, taxes or related charges under Sections 4975 or 4971 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Plan; (k) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent, upon any Loan Party or any of its ERISA Affiliates; (l) the assertion of a claim (other than routine claims for benefits) against any Employee Plan or the assets thereof, or against any Loan Party or any of its ERISA Affiliates in connection with any Employee Plan or Multiemployer Plan; (m) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such Pension Plan (or such other Employee Plan) to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (n) the imposition on any Loan Party of any material fine, excise tax or penalty with respect to any Employee Plan or Multiemployer Plan resulting from any noncompliance with any Requirements of Law; (o) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan; or (p) the occurrence of any Foreign Plan Event.

“Erroneous Payment” has the meaning specified in Section 10.18(a).

“Erroneous Payment Subrogation Rights” has the meaning specified in Section 10.18(d).

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

“Event of Default” has the meaning specified therefor in Section 9.01.

“Excess Cash Flow” means, with respect to any Person for any period: (a) Consolidated EBITDA of such Person and its Subsidiaries for such period, less (b) the sum of, without duplication (solely to the extent financed with cash of such Person and its Subsidiaries generated as a result of such Person’s operations and not financed with proceeds of Dispositions, casualty proceeds, Equity Issuances or Indebtedness (other than ABL Debt)), (i) all cash principal payments on Indebtedness of such Person or any of its Subsidiaries during such period to the extent such Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement (but, in the case of revolving loans, only to the extent that the revolving credit commitment in respect thereof is permanently reduced by the amount of such payments), (ii) all Consolidated Interest Expense (net of interest income) to the extent paid or payable in cash during such period, (iii) the cash portion of Capital Expenditures made by such Person and its Subsidiaries during such period to the extent permitted to be made under this Agreement (excluding Capital Expenditures to the extent financed through the incurrence of Indebtedness or through an Equity Issuance), (iv) all scheduled loan servicing fees and other similar fees in respect of Indebtedness of such Person or any of its Subsidiaries paid in cash during such period, to the extent such Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement, (v) Taxes (including federal, state, local, foreign, franchise, excise, property and similar Taxes) and Permitted Tax Distributions paid in cash by such Person and its Subsidiaries for such period, (vi) all cash expenses, cash charges, cash losses and other cash items that were added back in the determination of Consolidated EBITDA for such period, (vii) all amounts added back to Consolidated EBITDA for such period pursuant to clause (b)(viii)(A) of the definition thereof, and (viii) the excess, if any, of Working Capital at the end of such period over Working Capital at the beginning of such period (or minus the excess, if any, of Working Capital at the beginning of such period over Working Capital at the end of such period).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Account” means any deposit account or securities account specifically and exclusively used (a) as a payroll account so long as such payroll account is a zero balance account, (b) as a Petty Cash Account so long as the aggregate amount on deposit in all petty cash accounts of all Credit Parties does not exceed \$500,000 at any one time for all such deposit accounts combined, (c) to hold amounts required to be paid in connection with workers compensation claims, unemployment insurance, social security benefits and other similar forms of governmental insurance benefits, or (d) to hold amounts which are required to be pledged or otherwise provided as security as required by law or pension requirement.

“Excluded Subsidiary” means (a) any Subsidiary that is a “controlled foreign corporation” as defined under Section 957 of the Internal Revenue Code (“CFC”); (b) any Domestic Subsidiary that conducts no material business and has no material assets other than Equity Interests in one or more CFCs, and (c) any Immaterial Subsidiary. Notwithstanding the foregoing, no Subsidiary that owns or is the exclusive licensee of any Material Asset shall be an Excluded Subsidiary.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.07, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.09(d) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Credit Facility” means that certain Credit Agreement, dated as of August 10, 2023 (as amended, restated, supplemented or otherwise modified from time to time) among the Parent, the Borrowers and certain other Subsidiaries of the Parent, as borrowers, the other “Credit Parties” (as defined therein) party thereto, the lenders party thereto and Whitehawk Capital Partners, LP, as administrative agent and collateral agent.

“Existing Lenders” means Whitehawk Capital Partners, LP and the lenders party to the Existing Credit Facility.

“Extraordinary Receipts” means any cash received by Holdings or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.05(c)(ii) or (iii) hereof), including (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance (other than to the extent such insurance proceeds (x) are in connection with a casualty event and are reimbursement or compensation for amounts previously paid by the Borrower or any of its Subsidiaries in respect of remedying such casualty event or (y) are immediately payable to a Person that is not the Borrower or any of its Subsidiaries pursuant to director and officer liability insurance policy provisions or in accordance with applicable Requirements of Law or with Contractual Obligations entered into in the ordinary course of business), (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments (other than to the extent such indemnity payments (x) constitute reimbursement or compensation for amounts previously paid by the Borrower or any of its Subsidiaries in respect of the applicable event relating to the payment of such indemnity payments or (y) are immediately payable to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries) and (g) any purchase price adjustment received in connection with any purchase agreement.

“Facility” means the real property identified on Schedule 1.01(B) and any New Facility hereafter acquired by the Parent or any of its Subsidiaries, including, the land on which each such facility is located, all buildings and other improvements thereon, and all fixtures located thereat or used in connection therewith.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal, tax or regulatory legislation, rules or official practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of Sections 1471 through 1474 of the Internal Revenue Code and the Treasury Regulations thereunder.

“FCPA” has the meaning specified therefor in the definition of Anti-Corruption Laws.

“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 Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Fee Letter” means the fee letter, dated as of the Effective Date, among the Borrowers and the Administrative Agent.

“Final Maturity Date” means December 27, 2029; provided that if such day is not a Business Day, then the Final Maturity Date shall be the immediately preceding Business Day.

“Financial Statements” means (a) the audited consolidated balance sheet of Holdings and its Subsidiaries for the Fiscal Year ended December 31, 2023, and the related consolidated statement of operations, shareholders’ equity and cash flows for the Fiscal Year then ended, (b) the unaudited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal quarters ended March 31, 2024, June 30, 2024 and September 30, 2024, and the related consolidated statement of operations, shareholder’s equity and cash flows for such fiscal quarters, and (c) the unaudited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal month ended October 31, 2024, and the related consolidated statement of operations, shareholder’s equity and cash flows for such fiscal month.

“Fiscal Year” means the fiscal year of the Parent and its Subsidiaries ending on December 31 of each year.

“Fixed Charge Coverage Ratio” means, with respect to any Person for any period, the ratio of (a) (i) Consolidated EBITDA of such Person and its Subsidiaries for such period minus (ii) Capital Expenditures made by such Person and its Subsidiaries during such period to the extent funded with revolving Indebtedness or cash on the balance sheet of such Person or its Subsidiaries (other than cash consisting of proceeds received by the Parent or its Subsidiaries in connection with any Equity Issuance or casualty event) minus (iii) all income taxes paid in cash by such Person and its Subsidiaries during such period (net of any income tax refunds or credit received in cash), including any Permitted Tax Distributions made during such period to (b) the sum of (i) cash interest payments made by such Person and its Subsidiaries during such period in respect of Funded Indebtedness plus (ii) scheduled principal payments in respect of Funded Indebtedness to the extent paid in cash by such Person and its Subsidiaries during such period plus (iii) without duplication of any other amounts herein, dividends or distributions paid in cash by such Person and its Subsidiaries during such period (if any), to the extent permitted to be paid under this Agreement.

“Floor” means a rate of interest equal to 2.50% per annum.

“Foreign Lender” has the meaning specified therefor in Section 2.09(d)(ii)(B).

“Foreign Plan” means any employee benefit plan, program, policy, arrangement or agreement maintained, sponsored or contributed to, or for which there is an obligation to contribute to, by any Loan Party or any of its ERISA Affiliates that is subject to any Requirements of Laws other than, or in addition to, the laws of the United States or any state thereof or the laws of the District of Columbia.

“Foreign Plan Event” means, with respect to any Foreign Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any Requirement of Law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make any required contribution or payment under any Requirement of Law within the time permitted by any Requirement of Law for such contributions or payments, (c) the receipt of a notice from a Governmental Authority relating to the intention to terminate any such Foreign Plan or to appoint a trustee or similar official to administer any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, (d) the incurrence of any liability by any Loan Party or any Subsidiary under any law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction with respect to a Foreign Plan that is prohibited under any Requirement of Law and that could reasonably be expected to result in the incurrence of any liability by any Loan Party or any Subsidiary, or the imposition on any Loan Party or any Subsidiary of any fine, excise tax or penalty with respect to a Foreign Plan resulting from any noncompliance with any Requirement of Law.

“Funded Indebtedness” means all Indebtedness of the Parent and its Subsidiaries described in clauses (a), (c), (e) and (f) in the definition thereof (limited, in the case of such clause (f) to the amount of any amounts drawn and unreimbursed in respect of letters of credit), including the ABL Debt and all Indebtedness incurred by the Parent or any of its Subsidiaries in connection with any Sale and Leaseback Transaction.

“Funding Losses” has the meaning specified therefor in Section 2.08.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis provided that for the purpose of Section 7.03 hereof and the definitions used therein, “GAAP” shall mean generally accepted accounting principles in effect on the date hereof and consistent with those used in the preparation of the Financial Statements, provided, further, that if there occurs after the date of this Agreement any change in GAAP that affects in any respect the calculation of any covenant contained in Section 7.03 hereof, the Collateral Agent and the Administrative Borrower shall negotiate in good faith amendments to the provisions of this Agreement that relate to the calculation of such covenant with the intent of having the respective positions of the Lenders and the Borrowers after such change in GAAP conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, the covenants in Section 7.03 hereof shall be calculated as if no such change in GAAP has occurred.

“Governing Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization, and the operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, declaration or other applicable agreement or documentation evidencing or otherwise relating to its formation or organization, governance and capitalization; and (d) with respect to any of the entities described above, any other agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization.

“Governmental Authority” means any nation or government, any foreign, Federal, state, territory, provincial, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guaranteed Obligations” has the meaning specified therefor in Section 11.01.

“Guarantor” means (a) the Parent and each Subsidiary of the Parent listed as a “Guarantor” on the signature pages hereto, and (b) each other Person which guarantees, or is required to provide a guarantee, pursuant to Section 7.01(b) or otherwise, all or any part of the Obligations.

“Guaranty” means (a) the guaranty of each Guarantor party hereto contained in Article XI hereof and (b) each other guaranty, in form and substance satisfactory to the Collateral Agent, made by any other Guarantor in favor of the Collateral Agent for the benefit of the Agents and the Lenders guaranteeing all or part of the Obligations.

“Hazardous Material” means any element, material, substance, waste, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic or hazardous substance, hazardous waste, universal waste, special waste, or solid waste or is otherwise characterized by words of similar import under any Environmental Law or that is regulated under, or for which liability or standards of care are imposed, pursuant to any Environmental Law, including petroleum, polychlorinated biphenyls; asbestos-containing materials, lead or lead-containing materials, urea formaldehyde-containing materials, radioactive materials, radon, per- and polyfluoroalkyl substances and mold.

“Hedging Agreement” means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement (but excluding any agreement providing for the forward purchasing of coffee or other inventory in the ordinary course of business so long as such agreements are not required to be recorded as derivatives on the balance sheet).

“Highest Lawful Rate” means, with respect to any Agent or any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws applicable to such Agent or such Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“Holdings” means BRC, Inc., a Delaware public benefit corporation.

“Immaterial Subsidiary” means, at any time, any Subsidiary that (a) contributed 2.5% or less of the revenues of the Parent and its Subsidiaries for the most recently ended Test Period, and (b) had assets representing 2.5% or less of the total consolidated assets of the Parent and its Subsidiaries on the last day of the most recently ended Test Period; provided, if at any time and from time to time after the Effective Date, Immaterial Subsidiaries comprise in the aggregate more than 5.0% of the revenues of the Parent and its Subsidiaries for the most recently ended Test Period or more than 5.0% of the consolidated assets of the Parent and its Subsidiaries as of the end of the most recently ended Test Period, then the Parent shall, not later than thirty days after the date by which financial statements for such period are required to be delivered (or such longer period as the Administrative Agent may agree in its sole discretion), designate in writing to the Administrative Agent that one or more of such Subsidiaries is no longer an Immaterial Subsidiary for purposes of this Agreement to the extent required such that the foregoing condition ceases to be true. As of the Effective Date, the Immaterial Subsidiaries are listed on Schedule 1.01(C). Notwithstanding the foregoing, no Subsidiary that (i) owns or is the exclusive licensee of any Intellectual Property, (ii) owns any Real Property, (iii) owns any Equity Interests in any other Person (other than any other Immaterial Subsidiary), or (iv) is a party to any Material Contract shall be an Immaterial Subsidiary.

“Incremental Term Lender” means a Lender with an Incremental Term Loan Commitment or an outstanding Incremental Term Loan.

“Incremental Term Loan Amount” means, at any time, the excess, if any, of (a) \$20,000,000 minus (b) the aggregate amount of all Incremental Term Loan Commitments established prior to such time pursuant to Section 2.11.

“Incremental Term Loan Assumption Agreement” means an Incremental Term Loan Assumption Agreement among, and in form and substance reasonably satisfactory to, the Borrowers, the Agents and one or more Incremental Term Lenders.

“Incremental Term Loan Commitment” means the commitment of any Lender, established pursuant to Section 2.11, to make Incremental Term Loans to the Borrowers.

“Incremental Term Loan Maturity Date” means the final maturity date of any Other Term Loan, as set forth in the applicable Incremental Term Loan Assumption Agreement; provided that if such day is not a Business Day, then the Incremental Term Loan Maturity Date shall be the immediately preceding Business Day.

“Incremental Term Loan Repayment Dates” means the dates scheduled for the repayment of principal of any Other Term Loan, as set forth in the applicable Incremental Term Loan Assumption Agreement.

“Incremental Term Loans” means term loans made by one or more Lenders to the Borrowers pursuant to Section 2.01(a)(ii). Incremental Term Loans may be made in the form of additional Term Loans or, to the extent permitted by Section 2.11 and provided for in the relevant Incremental Term Loan Assumption Agreement, Other Term Loans.

“Indebtedness” means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables or other accounts payable incurred in the ordinary course of such Person’s business); (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used or acquired by such Person, even though the rights and remedies of the lessor, seller or lender thereunder may be limited to repossession or sale of such property; (e) all indebtedness of such Person incurred to finance or reimburse the acquisition, construction or installation of any fixed assets, including all Capitalized Lease Obligations; (f) all obligations and liabilities, contingent or otherwise, of such Person, in respect of surety bonds (whether performance, bid or otherwise), letters of credit, bankers’ acceptances, drafts and similar facilities or instruments; (g) all obligations and liabilities, calculated on a basis reasonably satisfactory to the Collateral Agent and in accordance with accepted practice, of such Person under Hedging Agreements; (h) all monetary obligations under any receivables factoring, receivable sales or similar transactions and all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing; (i) all Contingent Obligations; (j) all Disqualified Equity Interests; (k) representing obligations under any “take or pay” or similar arrangements, (l) representing any earnout, purchase price adjustment or similar contingent obligation to the extent required to be included as a liability on the balance sheet of such Person in accordance with GAAP, and (m) all obligations referred to in clauses (a) through (l) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership of or joint venture in which such Person is a general partner or a joint venturer.

“Indemnified Matters” has the meaning specified therefor in Section 12.15.

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

“Indemnitees” has the meaning specified therefor in Section 12.15.

“Initial Term Loan” means, collectively, the loans made by the Initial Term Loan Lenders to the Borrowers on the Effective Date pursuant to Section 2.01(a)(i).

“Initial Term Loan Commitment” means, with respect to each Lender, the commitment of such Lender to make the Initial Term Loan to the Borrowers in the amount set forth in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement.

“Initial Term Loan Lender” means a Lender with an Initial Term Loan Commitment or an Initial Term Loan.

“Initial Yield” means, with respect to any Other Term Loans, the amount (as reasonably determined by the Collateral Agent) equal to the sum of (a) the margin above the Adjusted Term SOFR (or the equivalent thereof) on such Other Term Loans (increased by the amount that any “floor” applicable to such Other Term Loans on the date of the calculation exceeds the Adjusted Term SOFR rate (or the equivalent thereof) on such date), and (b) the quotient obtained by dividing (i) the amount of any Up-Front Fees on such Other Term Loans by (ii) the lesser of (x) the Weighted Average Life to Maturity of such Other Term Loans and (y) four.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

“Intellectual Property” has the meaning specified therefor in the Security Agreement, and shall include all rights and interests of any Loan Party or Subsidiary under any Intellectual Property Contract.

“Intellectual Property Contracts” means all agreements concerning Intellectual Property, including license agreements, technology consulting agreements, confidentiality agreements, co-existence agreements, consent agreements and non-assertion agreements.

“Intellectual Property Security Agreement” has the meaning specified therefor in the Security Agreement.

“Intercompany Subordination Agreement” means an Intercompany Subordination Agreement made by the Parent and its Subsidiaries in favor of the Collateral Agent for the benefit of the Agents and the Lenders, in form and substance reasonably satisfactory to the Collateral Agent.

“Intercreditor Agreement” means the Intercreditor Agreement, dated as of the date hereof, by and among the Loan Parties, the Collateral Agent and the ABL Agent.

“Interest Payment Date” means as to any SOFR Loan, the last day of each Interest Period therefor and the Final Maturity Date.

“Interest Period” means, with respect to each SOFR Loan, a period commencing on the date of the making of such SOFR Loan (or the continuation of a SOFR Loan or the conversion of a Reference Rate Loan to a SOFR Loan) and ending one or three months (as elected in the applicable SOFR Notice) thereafter; provided that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c) through (e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon Adjusted Term SOFR from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is one or three months after the date on which the Interest Period began, as applicable, (e) the Borrowers may not elect an Interest Period which will end after the Final Maturity Date, and (f) no tenor that has been removed from this definition pursuant to Section 2.07(h)(iv) shall be available for specification in such Notice of Borrowing or SOFR Notice.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Inventory” means, with respect to any Person, all goods and merchandise of such Person leased or held for sale or lease by such Person, including all raw materials, work-in-process and finished goods, and all packaging, supplies and materials of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which would give rise to an Account or cash.

“Investment” means, with respect to any Person, (a) any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances or other extensions of credit (excluding Accounts arising in the ordinary course of business), capital contributions or acquisitions of Indebtedness (including, any bonds, notes, debentures or other debt securities), Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), (b) the purchase or ownership of any futures contract or liability for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, (c) any cryptocurrency or blockchain based investment or (d) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP.

“Joinder Agreement” means a Joinder Agreement, substantially in the form of Exhibit A, duly executed by a Subsidiary of a Loan Party made a party hereto pursuant to Section 7.01(b).

“Lease” means any lease, sublease or license of, or other agreement granting a possessory interest in, real property to which any Loan Party or any of its Subsidiaries is a party as lessor, lessee, sublessor, sublessee, licensor or licensee.

“Lender” has the meaning specified therefor in the preamble hereto.

“Lien” means any mortgage, deed of trust, deed to secure debt, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

“Liquidity” means Qualified Cash plus Availability.

“Loan” means any Term Loan made by a Lender to the Borrowers pursuant to Article II hereof.

“Loan Document” means this Agreement, the Fee Letter, any Control Agreement, the Disbursement Letter, any Guaranty, the Intercompany Subordination Agreement, the Intercreditor Agreement, any Joinder Agreement, any Mortgage, any Security Agreement, any other Collateral Document, the VCOC Management Rights Agreement, any Incremental Term Loan Assumption Agreement, the Perfection Certificate and any other agreement, instrument, certificate, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Loan or any other Obligation.

“Loan Party” means any Borrower and any Guarantor.

“Loan Party Data” has the meaning given to such term in Section 6.01(ii).

“Loan Party System” has the meaning given to such term in Section 6.01(ii).

“Make-Whole Amount” means, as of any date of determination, an amount equal to (i) the difference (which shall not be zero) between (A) the aggregate amount of interest (including, (x) interest payable in cash, in kind or deferred and (y) if applicable, interest at the Post-Default Rate) which would have otherwise been payable on the principal amount of the Term Loans paid on such date (or in the case of an Applicable Premium Trigger Event specified in clauses (b), (c) or (d) of the definition thereof, the principal amount of the Term Loans outstanding on such date) from the date of the occurrence of the Applicable Premium Trigger Event until (and excluding) the first anniversary of the Effective Date minus (B) the aggregate amount of interest the Lenders would earn if the prepaid (or deemed prepayment in the case of an acceleration of the Loans) or reduced principal amount of the Term Loans were reinvested for the period from the date of prepayment (or deemed prepayment in the case of an acceleration of the Loans) or reduction until (and excluding) the first anniversary of the Effective Date at the Treasury Rate, plus (ii) 3.00%.

“Material Adverse Effect” means a material adverse effect on any of (a) the operations, assets, liabilities or financial condition of the Loan Parties taken as a whole, (b) the ability of the Loan Parties taken as a whole to perform any of their obligations under any Loan Document, (c) the legality, validity or enforceability of this Agreement or any other Loan Document, (d) the rights and remedies of any Agent or any Lender under any Loan Document, or (e) the validity, perfection or priority of a Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any material portion of the Collateral.

“Material Asset” means all Material Intellectual Property and any other asset owned by, or licensed to, the Parent or any of its Subsidiaries that is material to the business of Parent or any of its Subsidiaries, taken as a whole.

“Material Contract” means, with respect to any Person, all contracts or agreements as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect (other than master agreements without mandatory purchase obligations and purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 60 days’ notice without penalty or premium).

“Material Intellectual Property” means all Intellectual Property owned by, or licensed to, the Parent or any of its Subsidiaries that is material to the business of the Parent or any of its Subsidiaries, taken as a whole (whether owned as of the Effective Date or thereafter acquired).

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” means a mortgage, deed of trust or deed to secure debt, in form and substance satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Agents and the Lenders, securing the Obligations and delivered to the Collateral Agent.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any of its ERISA Affiliates has contributed, or has been obligated to contribute, to at any time during the preceding the six calendar years.

“Net Cash Proceeds” means, with respect to, any issuance or incurrence of any Indebtedness, any Equity Issuance, any Disposition or the receipt of any Extraordinary Receipts by any Person or any of its Subsidiaries, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary, in connection therewith after deducting therefrom only (a) in the case of any Disposition or the receipt of any Extraordinary Receipts consisting of insurance proceeds or condemnation awards, the amount of any Indebtedness secured by any Permitted Lien on any asset (other than Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection therewith (other than Indebtedness under this Agreement), (b) reasonable expenses related thereto incurred by such Person or such Subsidiary in connection therewith, (c) transfer taxes paid to any taxing authorities by such Person or such Subsidiary in connection therewith, and (d) net income taxes to be paid in connection therewith (after taking into account any tax credits or deductions and any tax sharing arrangements), in each case, to the extent, but only to the extent, that the amounts so deducted are (i) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries and (ii) properly attributable to such transaction or to the asset that is the subject thereof.

“New Facility” has the meaning specified therefor in Section 7.01(m).

“Non-U.S. Lender” has the meaning specified therefor in Section 2.09(d).

“Notice of Borrowing” has the meaning specified therefor in Section 2.02(a).

“Obligations” means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the Lenders arising under or in connection with this Agreement or any other Loan Document, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.01. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees, premiums (including the Applicable Premium), attorneys’ fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents, and (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent or any Lender (in its sole discretion) may elect to pay or advance on behalf of such Person.

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

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient 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 Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“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 Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.10).

“Other Term Loans” has the meaning specified therefor Section 2.11(a).

“Parent” has the meaning specified therefor in the preamble hereto.

“Participant Register” has the meaning specified therefor in Section 12.07(i).

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

“Pension Plan” means an Employee Plan that is subject to Section 412 of the Internal Revenue Code, Section 302 of ERISA or Title IV of ERISA maintained, sponsored or contributed to, or for which there is an obligation to contribute to, by any Loan Party or any of its ERISA Affiliates at any time during the preceding six calendar years.

“Perfection Certificate” means a certificate in form and substance satisfactory to the Collateral Agent providing information with respect to the property of each Loan Party.

“Periodic Term SOFR Determination Day” has the meaning specified therefor in the definition of Term SOFR.

“Permitted Acquisition” means any Acquisition by a Loan Party (other than the Parent) or any wholly-owned Subsidiary of a Loan Party to the extent that each of the following conditions shall have been satisfied:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition after giving pro forma effect to such Acquisition;

(b) to the extent the Acquisition will be financed in whole or in part with the proceeds of any Loan, the conditions set forth in Section 5.02 shall have been satisfied;

(c) the Borrowers shall have furnished to the Agents (i) at least 15 days prior to the consummation of such Acquisition, an executed term sheet and/or commitment letter (setting forth in reasonable detail the terms and conditions of such Acquisition), (ii) at the request of any Agent, copies of such other agreements, instruments or other documents as any Agent shall reasonably request, including executed counterparts of the respective agreements, instruments or other documents pursuant to which such Acquisition is to be consummated (including, any related management, non-compete, employment, option or other material agreements), any schedules to such agreements, instruments or other documents and all other material ancillary agreements, instruments or other documents to be executed or delivered in connection therewith, (iii) pro forma financial statements of the Parent and its Subsidiaries after the consummation of such Acquisition, and (iii) a certificate of the chief financial officer of the Parent demonstrating compliance with all covenants set forth in Section 7.03 hereof as of the end of the most recently ended Test Period, determined on a Pro Forma Basis after giving effect to such Acquisition;

(d) such Acquisition shall be consummated in such a manner so that the acquired assets or Equity Interests are owned either by a Loan Party or a wholly-owned Subsidiary of a Loan Party and, if effected by merger or consolidation (i) involving the Borrower, the Borrower shall be the continuing or surviving Person and (ii) involving a Loan Party, such Loan Party shall be the continuing or surviving Person (or such continuing or surviving Person shall become a Loan Party and execute and deliver the agreements, instruments and other documents required by Section 7.01(b) on or prior to the date of the consummation of such Acquisition);

(e) the assets being acquired or the Person whose Equity Interests are being acquired did not have negative Consolidated EBITDA in excess of negative \$2,500,000 for any individual proposed Acquisition or negative \$5,000,000 for all such proposed completed Acquisitions taken as a whole during the 12 consecutive month period most recently concluded prior to the date of the proposed Acquisition;

(f) the assets being acquired (other than *ade minimis* amount of assets in relation to the Loan Parties' and their Subsidiaries' total assets), or the Person whose Equity Interests are being acquired, are useful in or engaged in, as applicable, the business of the Loan Parties and their Subsidiaries or a business reasonably related, incidental or ancillary thereto;

(g) the assets being acquired (other than *ade minimis* amount of assets in relation to the assets being acquired) are located within the United States or the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States;

(h) the board of directors (or other comparable governing body) of the Person whose Equity Interests or assets are being acquired shall have duly approved such Acquisition and such Person shall not have announced that it will oppose such Acquisition and shall not have commenced (or had commenced against it) any adverse proceeding that alleges that such Acquisition will violate applicable law or any Material Contract;

(i) any such Subsidiary (and its equityholders) shall execute and deliver the agreements, instruments and other documents required by Section 7.01(b) on or prior to the date of the consummation of such Acquisition; and

(j) the aggregate Purchase Price (other than any Purchase Price paid in the form of Qualified Equity Interests or the proceeds of any substantially concurrent issuance of Qualified Equity Interests of Holdings) payable in respect of all Acquisitions (including the proposed Acquisition) shall not exceed (i) \$2,500,000 in the aggregate during any Fiscal Year and (ii) \$5,000,000 in the aggregate during the term of this Agreement.

“Permitted Cure Equity” means Qualified Equity Interests of the Parent.

“Permitted Disposition” means:

(a) sale or other Disposition of Inventory in the ordinary course of business for cash or pursuant to any barter, trade or similar agreement; *provided* that, on and after January 1, 2025, the aggregate amount of non-cash consideration received by the Loan Parties and the Subsidiaries in connection with any Disposition of Inventory by means of a barter or trade pursuant to this clause (a) shall not exceed \$5,000,000 in the aggregate in any Fiscal Year;

(b) licensing, on a non-exclusive basis, Intellectual Property rights in the ordinary course of business;

(c) a lease, sublease, license or sublicense of real property granted by any Loan Party or any Subsidiary to any other Person in the ordinary course of business that does not interfere in any material respect with such Loan Party’s or Subsidiary’s business or the Collateral Agent’s access to any Collateral;

(d) (i) the lapse of Registered Intellectual Property of the Parent and its Subsidiaries to the extent not economically desirable in the conduct of their business or (ii) the abandonment of Intellectual Property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not materially adverse to the interests of the Secured Parties;

(e) any involuntary loss, damage or destruction of property;

(f) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;

(g) so long as no Event of Default has occurred and is continuing or would result therefrom, transfers of assets (i) from the Parent or any of its Subsidiaries to a Loan Party (other than the Parent), and (ii) from any Subsidiary of the Parent that is not a Loan Party to any other Subsidiary of the Parent;

(h) Disposition of obsolete or worn-out equipment in the ordinary course of business or other property no longer useful in the Borrowers’ business; provided that the fair market value of all assets sold, transferred, leased or otherwise disposed of pursuant to this clause (h) shall not exceed \$1,000,000 in the aggregate in any Fiscal Year;

(i) Sale and Leaseback Transactions expressly permitted under Section 7.02(f);

(j) Disposition of property or assets not otherwise permitted in clauses (a) through (i) above or clauses (k) through (m) below for cash in an aggregate amount not less than the fair market value of such property or assets; provided that (i) such Disposition is for consideration at least 75% of which is cash, (ii) the aggregate consideration for such Disposition is not less than the fair market value of such property or assets, and (iii) the Net Cash Proceeds of any such Disposition (A) do not exceed \$1,000,000 in the aggregate in any Fiscal Year and (B) are paid to the Administrative Agent for the benefit of the Agents and the Lenders pursuant to the terms of Section 2.05(c)(ii) to the extent required thereby or applied as provided in Section 2.05(c)(vi);

(k) Dispositions of cash and other property in the form of charitable donations;

(l) a write-off, discount, sale, or other Disposition of defaulted or past due Accounts and similar obligations in the ordinary course of business and (for avoidance of any doubt) not part of any financing of Accounts;

(m) the voluntary termination of any Hedging Agreement to which any Loan Party or any of its Subsidiaries is a party; and

(n) any (i) issuance of Equity Interests or (ii) Disposition of Equity Interests of Holdings that are contributed or otherwise delivered to a Loan Party or a Subsidiary substantially contemporaneously with the Disposition thereof, in each case (A) to current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Affiliates or family members or any permitted transferees thereof) of a Loan Party or its Subsidiaries pursuant to any management equity plan, stock option plan or similar management or employee benefit plan or arrangement or (B) to effect a Permitted Restricted Payment (and for the avoidance of doubt, without duplication thereof); provided that such issuance or Disposition of Equity Interests does not result in a Change of Control.

Notwithstanding the foregoing, no Loan Party may transfer, assign or exclusively license any Material Asset to any Subsidiary that is not a Loan Party, nor shall any Loan Party or any Subsidiary transfer, assign, exchange or otherwise dispose of any assets pursuant to any barter, exchange or similar arrangement without the prior written consent of the Administrative Agent (except to the extent permitted by clause (a) above), and any such transaction shall not be a Permitted Disposition.

“Permitted Holders” means (a) any holders of Equity Interests of Holdings as of the Effective Date, any trust, entity, family partnership, or other similar estate planning vehicle established by or on behalf of, and for the primary benefit of, any such Persons, and after the death or incapacity of such Persons, the heirs or beneficiaries of such Persons, (b) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing Persons described in clause (a) are members; provided that in the case of such group and without giving effect to the existence of such group or any other group, such Persons described in clause (a), collectively, have, directly or indirectly, beneficial ownership of more than 50.0% of the Equity Interests of Holdings, and (c) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Equity Interests of Holdings.

“Permitted Indebtedness” means:

- (a) any Indebtedness owing to any Agent or any Lender under this Agreement and the other Loan Documents (including in connection with any Incremental Term Loans);
- (b) any other Indebtedness listed on Schedule 7.02(b), and any Permitted Refinancing Indebtedness in respect of such Indebtedness;
- (c) Permitted Purchase Money Indebtedness and any Permitted Refinancing Indebtedness in respect of such Indebtedness;
- (d) Permitted Intercompany Investments;
- (e) Indebtedness incurred in the ordinary course of business (i) under performance, surety, statutory, and appeal bonds and (ii) arising from the endorsement of any check, draft or other item of payment for collection or deposit;
- (f) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties incurred in the ordinary course of business, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such period;
- (g) the incurrence by any Loan Party of Indebtedness under Hedging Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party’s operations and not for speculative purposes;
- (h) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called “procurement cards” or “P-cards”) or other similar cash management services, in each case, incurred in the ordinary course of business;
- (i) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete or earnout obligations of any Loan Party incurred in connection with the consummation of one or more Permitted Acquisitions, in an aggregate amount in the case of any such earnout obligations not exceeding \$2,000,000 at any time outstanding;
- (j) unsecured Indebtedness consisting of seller notes incurred in connection with the consummation of one or more Permitted Acquisitions so long as such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Collateral Agent;
- (k) Indebtedness of a Person whose assets or Equity Interests are acquired by a Borrower or any of its Subsidiaries in a Permitted Acquisition in an aggregate amount not to exceed \$2,000,000 at any one time outstanding; provided, that such Indebtedness (i) was in existence prior to the date of such Permitted Acquisition and (ii) was not incurred in connection with, or in contemplation of, such Permitted Acquisition;

(l) so long as the same is subject to the Intercreditor Agreement (or another intercreditor agreement on terms and conditions reasonably acceptable to the Collateral Agent), ABL Debt in an aggregate principal amount (including all funded and unfunded commitments and credit extensions thereunder) not exceeding \$75,000,000 plus the aggregate amount of Bank Product Obligations (as defined in the ABL Credit Agreement) from time to time outstanding thereunder, and any Permitted Refinancing thereof;

(m) Subordinated Indebtedness (other than Subordinated Indebtedness described in clause (j) above) in an aggregate amount not exceeding \$10,000,000 at any time outstanding;

(n) Indebtedness representing deferred compensation to officers, directors or employees of any Loan Party or any of its Subsidiaries, and similar accrued and deferred officer, director or employee expenses (including salaries, accrued vacation and other compensation) issued or incurred in the ordinary course of business;

(o) Indebtedness consisting of unsecured obligations owing under any dealer, customer or supplier incentive, supply, license or similar agreements entered into in the ordinary course of business;

(p) to the extent constituting Indebtedness, customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business;

(q) unsecured Indebtedness in an aggregate amount not exceeding \$1,000,000 at any time outstanding consisting of promissory notes issued to current or former officers, managers, consultants, directors, and employees, and their respective estates, spouses or former spouses or Affiliates to finance the purchase or redemption of Equity Interests or other equity-based awards of a Loan Party or Subsidiary or a parent thereof permitted by Section 7.02(h); and

(r) other unsecured Indebtedness in an aggregate amount not to exceed the greater of (i) \$2,500,000 and (ii) 10% of Consolidated EBITDA for the most recently ended Test Period at any one time outstanding.

“Permitted Intercompany Investments” means Investments made by (a) a Loan Party to or in another Loan Party (other than the Parent), (b) a Subsidiary that is not a Loan Party to or in another Subsidiary that is not a Loan Party, (c) a Subsidiary that is not a Loan Party to or in a Loan Party, so long as, in the case of a loan or advance, the parties thereto are party to the Intercompany Subordination Agreement, (d) a Loan Party to a Subsidiary that is not a Loan Party in an aggregate amount not exceeding \$1,000,000 at any time outstanding, and (e) a Loan Party to or in a Subsidiary of such Loan Party that is an Excluded Subsidiary consisting solely of its ownership of the Equity Interests of such Excluded Subsidiary (and so long as, to the extent required under the Security Agreement, such Equity Interests are pledged to the Collateral Agent pursuant to the Security Agreement and the other Collateral Documents).

“Permitted Investments” means:

(a) Investments in cash and Cash Equivalents;

- (b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;
- (c) advances made in connection with purchases of goods or services in the ordinary course of business;
- (d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;
- (e) Investments existing on the date hereof, as set forth on Schedule 7.02(e) hereto, but not any increase in the amount thereof as set forth in such Schedule or any other modification of the terms thereof;
- (f) Permitted Intercompany Investments;
- (g) Permitted Acquisitions;
- (h) Investments made with the proceeds of any issuance, or made in exchange for, Qualified Equity Interests of Holdings (other than (x) to the Parent or any Subsidiary or (y) pursuant to any management equity plan or equity option plan or any other management or employee benefit plan or agreement of the Parent or any Subsidiary) after the Effective Date; provided that, in each case, (i) substantially concurrently with any such equity issuance, the proceeds thereof are contributed to the Borrowers, (ii) an officer's certificate executed by an Authorized Officer of the Administrative Borrower is delivered to the Administrative Agent no later than two Business Days after such contribution is made setting forth the amount of such proceeds designated for investment pursuant to this clause (h), and (iii) such Investment is made within 10 Business Days after the Borrowers' receipt of the proceeds thereof; and
 - (i) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, any other Investments (excluding any Investment in a Subsidiary that is not a Loan Party) in an aggregate amount not to exceed \$2,500,000 at any time outstanding;
 - (j) to the extent constituting Investments, Hedging Agreements entered into in the ordinary course of business for the purpose of directly mitigating interest rate, commodity, or foreign currency risks associated with the operations of a Loan Party or its Subsidiaries and not for purposes of speculation;
 - (k) advances to an officer or employee for reasonable and customary salary, travel expenses, commissions and similar items in the ordinary course of business;
 - (l) Investments held by any Person that becomes a Subsidiary after the Effective Date in a transaction expressly permitted pursuant to this Agreement, to the extent that such Investments (i) were in existence at the time such Person became a Subsidiary and (ii) were not made in contemplation of, or in connection with, such Person becoming a Subsidiary; provided that, for the avoidance of doubt, with respect to any such Investment that constitutes an Investment in a Subsidiary that is not a Loan Party, such Investment shall constitute a utilization of such other clause or clauses of this definition permitting such Investment in such Subsidiary; and

(m) Investments consisting of non-cash loans to one or more directors, officers, employees or consultants of the Parent, any Subsidiary or Holdings to finance the acquisition of Equity Interests in Parent or Holdings.

Notwithstanding the foregoing, no Permitted Investment in any Affiliate of the Parent that is not a Loan Party shall consist of a transfer, assignment or exclusive license of any Material Asset.

“Permitted Liens” means:

- (a) Liens securing the Obligations (including any Incremental Term Loans);
- (b) Liens for taxes, assessments and governmental charges the payment of which is not required under Section 7.01(c)(ii);
- (c) Liens imposed by law, such as carriers’, warehousemen’s, mechanics’, materialmen’s and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than 30 days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;
- (d) Liens described on Schedule 7.02(a); provided that any such Lien shall only secure the Indebtedness that it secures on the Effective Date and any Permitted Refinancing Indebtedness in respect thereof;
- (e) purchase money Liens on property acquired or held by any Loan Party or any of its Subsidiaries in the ordinary course of its business to secure Permitted Purchase Money Indebtedness so long as such Lien only (i) attaches to such property and (ii) secures the Indebtedness that was incurred to acquire such property or any Permitted Refinancing Indebtedness in respect thereof;
- (f) deposits and pledges of cash securing (i) obligations incurred in respect of workers’ compensation, unemployment insurance or other forms of governmental insurance or benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations on surety or appeal bonds, but only to the extent such deposits or pledges are made or otherwise arise in the ordinary course of business and secure obligations not past due;
- (g) with respect to any Facility, easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that do not (i) secure obligations for the payment of money or (ii) individually or in the aggregate, materially impair the value of such property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person’s business;

(h) Liens of landlords and mortgagees of landlords (i) arising by statute or under any Lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, or (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(i) the title and interest of a lessor or sublessor in and to personal property leased or subleased (other than through a Capitalized Lease), in each case extending only to such personal property;

(j) non-exclusive licenses of Intellectual Property rights in the ordinary course of business;

(k) judgment liens (other than for the payment of taxes, assessments or other governmental charges) securing judgments and other proceedings not constituting an Event of Default under Section 9.01(j);

(l) rights of set-off or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business;

(m) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness; provided that such Liens (i) do not encumber any assets of the Borrower or the Subsidiaries, other than the assets acquired by the Borrower or any of its Subsidiaries in such Permitted Acquisition, (ii) were in existence prior to the date of such Permitted Acquisition, and (iii) were not incurred in connection with, or in contemplation of, such Permitted Acquisition;

(n) Liens assumed by the Borrowers and the Subsidiaries in connection with a Permitted Acquisition that secure Indebtedness permitted by clause (k) of the definition of Permitted Indebtedness;

(o) Liens solely on any cash earnest money deposits made by any Loan Party in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition;

(p) Liens on the Collateral securing (i) the ABL Facility and (ii) Bank Product Obligations and all other Obligations (each as defined in the ABL Credit Agreement), and in each case any Permitted Refinancing thereof, so long as such Liens are subject to the Intercreditor Agreement;

(q) Liens arising in the ordinary course of business pursuant to agreements with credit card processors or providers;

(r) Liens in favor of customs and revenue authorities arising as a matter of applicable law to secure payment of customs duties in connection with the importation of inventory and goods;

(s) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business; and

(t) other Liens which (i) do not secure Indebtedness for borrowed money or letters of credit or (ii) are junior to the Lien securing the Obligations and, in each case, as to which the aggregate amount of the obligations secured thereby does not exceed \$2,500,000 at any time outstanding.

“Permitted Purchase Money Indebtedness” means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations) incurred to finance the acquisition, construction, repair, replacement or improvement of any fixed assets secured by a Lien permitted under clause (c) of the definition of “Permitted Liens”; provided that (a) such Indebtedness is incurred within 90 days after such acquisition, construction, repair, replacement or improvement, (b) such Indebtedness when incurred shall not exceed the lesser of the purchase price of the asset financed or the fair market value of such asset at the time of such financing, and (c) the aggregate principal amount of all such Indebtedness shall not exceed \$10,000,000 at any time outstanding.

“Permitted Refinancing Indebtedness” means the extension of maturity, refinancing or modification of the terms of Indebtedness so long as:

(a) after giving effect to such extension, refinancing or modification, the amount of such Indebtedness is not greater than the amount of Indebtedness outstanding immediately prior to such extension, refinancing or modification (other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto);

(b) such extension, refinancing or modification (i) has a final maturity date equal to or later than the final maturity date of the Indebtedness so extended, refinanced or modified and (ii) does not result in a shortening of the average weighted maturity (measured as of the extension, refinancing or modification) of the Indebtedness so extended, refinanced or modified (and, in the case of revolving Indebtedness, does not require mandatory commitment reductions, if any, prior to the Final Maturity Date);

(c) such extension, refinancing or modification is pursuant to terms (other than pricing, yield and optional prepayment or redemption provisions) that are not, taken as a whole, materially less favorable to the Loan Parties and the Lenders than the terms of the Indebtedness (including terms relating to the collateral (if any) and subordination (if any)) being extended, refinanced or modified (except for covenants and other provisions applicable only to periods after the Final Maturity date);

(d) the Indebtedness that is extended, refinanced or modified is not recourse to any Loan Party or any of its Subsidiaries that is liable on account of the obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended;

(e) to the extent that the Indebtedness that is extended, refinanced or modified is secured, the Lien securing such Indebtedness satisfies the applicable requirements of Section 7.02(a) and, as of the date of the incurrence of such Indebtedness and after giving effect thereto, no Event of Default exists; and

(f) (A) if such Indebtedness being extended, refinanced or modified was subordinated to the Obligations, then the Permitted Refinancing Indebtedness shall also be subordinated to the Obligations on terms and pursuant to documentation no less favorable to the Lenders and the Administrative Agent, (B) if such Indebtedness being extended, refinanced or modified is unsecured, then the Permitted Refinancing Indebtedness shall also be unsecured, (C) if the Indebtedness being refinanced, refunded or replaced is secured, it is not secured by any assets that did not previously secure such Indebtedness, (D) if the Indebtedness being refinanced, refunded or replaced is Guaranteed, it shall not be Guaranteed by any Person that did not previously guarantee such Indebtedness and (E) if such Indebtedness is incurred under (and pursuant to) documentation other than this Agreement, it is understood and agreed that any such Indebtedness that is *pari passu* with the Obligations hereunder in right of payment and secured by the Collateral on a *pari passu* basis with respect to the Obligations hereunder that are secured on a first lien basis may participate, with respect to voluntary prepayments, on a pro rata basis, a less than pro rata basis, and with respect to mandatory prepayments, on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis), in each case, in respect of the Obligations, in each case as the Administrative Borrower and the relevant lender may agree.

“Permitted Restricted Payment Amount” means, for any Fiscal Year ending after December 31, 2025, an aggregate amount equal to 25% of Excess Cash Flow for the immediately preceding Fiscal Year.

“Permitted Restricted Payments” means any of the following Restricted Payments made by:

(a) any Loan Party to the Parent and by the Parent to Holdings in amounts necessary to pay (i) general corporate or other operating, administrative, compliance and overhead costs and expenses of Holdings (including expenses relating to auditing and other accounting matters and salaries and related reasonable and customary expenses incurred by employees of Holdings) (but excluding the portion of such amount that is attributable to the ownership or operations of any subsidiary of Holdings other than the Loan Parties and their Subsidiaries), (ii) franchise, excise and similar taxes, and other fees and expenses, required to maintain its corporate or legal existence, and (iii) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of Holdings (whether or not consummated),

(b) the Loan Parties and their Subsidiaries consisting of Permitted Tax Distributions, subject to the limitations set forth in such definition,

(c) (i) any Loan Party to any other Loan Party (other than the Parent) and (ii) any Subsidiary that is not a Loan Party to a Loan Party (other than the Parent) or any of its Subsidiaries,

(d) any Loan Party to the Parent and by the Parent to Holdings (i) to pay (or make Restricted Payments to allow Parent or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of such Loan Party (or of the Parent or any other such direct or indirect parent thereof) held by any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Loan Party (or the Parent or any other direct or indirect parent thereof) or any of its Subsidiaries or (ii) in the form of distributions to allow the Parent or any direct or indirect parent of the Parent to pay principal or interest on promissory notes that were issued to any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Subsidiary (or the Borrower or any other direct or indirect parent thereof) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests held by such Persons, in each case, upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee, manager or director equity plan, employee, manager or director stock option plan or any other employee, manager or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of such Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Subsidiaries; provided that the aggregate amount of Restricted Payments made pursuant to this clause (d) shall not exceed \$1,000,000 in the aggregate in any Fiscal Year,

(e) any Loan Party to the Parent and by the Parent to Holdings in an aggregate amount not to exceed \$500,000 in any Fiscal Year, so long as no Default or Event of Default shall have occurred and be continuing at the time of such payment or would result therefrom,

(f) the Parent, in the form of Qualified Equity Interests of the Parent, to pay dividends or make distributions on Equity Interests that accrue (but are not paid in cash) or are paid in-kind,

(g) commencing after the end of the Fiscal Year ending December 31, 2025, any Loan Party to the Parent and by the Parent to Holdings in an aggregate amount not to exceed the Permitted Restricted Payment Amount in any Fiscal Year, so long as (and only so long as) (i) no Default or Event of Default then exists or would result from the making of such Restricted Payment, (ii) the Total Net Leverage Ratio (calculated on a Pro Forma Basis after giving effect to the making of such Restricted Payment) as of the last day of the Test Period ending immediately prior to the date of the making of such Restricted Payment is less than 3:00:1.00, (iii) Consolidated EBITDA for the Test Period ending immediately prior to the date of the making of such Restricted Payment is not less than \$60,000,000, (iv) Liquidity (calculated on a Pro Forma Basis after giving effect to the making of such Restricted Payment) for (x) the period of 30 consecutive days prior to the making of such Restricted Payment and (y) as of the date of the making of such Restricted Payment, in each case of clauses (x) and (y) is not less than \$50,000,000, (v) the Cure Right shall not have been exercised at any time during the 12-month period ending on the date such Restricted Payment is made, (vi) the mandatory prepayment of Excess Cash Flow shall have been paid to the Administrative Agent pursuant to Section 2.05(c)(i) (to the extent required) with respect to the most recently ended Fiscal Year on or prior to the date of the making of such Restricted Payment, and (vii) the Administrative Agent shall have received a certificate of an Authorized Officer of Administrative Borrower certifying as to compliance with the foregoing clauses (i) through (vi) and including within it a calculation of the Permitted Restricted Payment Amount, and

(h) any Loan Party, so long as no Event of Default has occurred and is continuing, to the extent required (and not exceeding the aggregate amount required) to satisfy the obligations of the Parent and Holdings under the Tax Receivable Agreement.

Notwithstanding the foregoing, no Loan Party may transfer, assign or exclusively license any Material Asset to any Affiliate of the Parent that is not a Loan Party and any such transaction shall not be a Permitted Restricted Payment.

“Permitted Tax Distributions” means, with respect to any Loan Party so long as it is taxable as a partnership or “disregarded entity” for United States federal income tax purposes, tax distributions to the owners of Equity Interests in such Loan Party (its “shareholders”) in an aggregate amount that does not exceed, with respect to any period, an amount equal to (i) the product of (A) the Applicable Tax Percentage *multiplied by* (B) such Loan Party’s actual federal taxable income, *minus* (ii) to the extent not previously taken into account, any actual federal income tax benefit attributable to the Loan Party making such tax distribution that could be utilized by its shareholders, in the current or any prior year, or portion thereof, from and after the Effective Date (including any tax losses or tax credits), computed at the Applicable Tax Percentage of the year that such benefit is taken into account for purposes of this computation; provided, however, that the computation of distributions under this definition shall also take into account (x) the deductibility of state and local taxes for federal income tax purposes and (y) any difference in the Applicable Tax Percentage resulting from the nature of the taxable income (such as capital gain as opposed to ordinary income, if applicable).

“Permitted Specified Liens” means Permitted Liens described in clauses (a), (b) and (c) of the definition of Permitted Liens, and, solely in the case of Section 7.01(b)(i), including clauses (g), (h) and (i) of the definition of Permitted Liens.

“Person” means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

“Personal Information” means any information which (a) relates to, identifies, or describes an individual, (b) can be reasonably associated with a specific individual by any Loan Party or its Subsidiaries, or (c) is protected by applicable Laws regarding the privacy or security of Loan Party Data.

“Petty Cash Accounts” means Cash Management Accounts with deposits at any time in an aggregate amount not in excess of \$500,000 in the aggregate for all such accounts.

“Post-Default Rate” means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.00%, or, if a rate of interest is not otherwise in effect, interest at the highest rate specified herein for any Loan then outstanding prior to an Event of Default plus 2.00%.

“Pro Forma Basis” or “pro forma basis” or “Pro Forma Effect” or “pro forma effect” each means (subject to the terms of Section 1.07), as to any calculation of the Total Net Leverage Ratio or the Fixed Charge Coverage Ratio (including component definitions thereof), for any events as described below that occur during any period of four consecutive fiscal quarters (the “Reference Period”) (or after the end of such Reference Period but on or before the date of determination) for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred as of the first day of the Reference Period and that: (i) in making any determination of Consolidated EBITDA, effect shall be given to any Disposition, acquisition, Investment, capital expenditure, merger, amalgamation, consolidation (including the Transactions) (or any similar transaction or transactions not otherwise permitted under Section 7.02(b) or 7.02(e)) that require a waiver or consent of the Required Lenders and such waiver or consent has been obtained), any dividend, distribution or other similar payment, which adjustments the Administrative Borrower determines in good faith (with the consent of the Administrative Agent) as set forth in a certificate of a chief financial officer, treasurer or similar officer of the Administrative Borrower delivered to the Administrative Agent (the foregoing, together with any transactions related thereto or in connection therewith, and any other events that by the terms of the Loan Documents require pro forma compliance or determination on a pro forma basis, the “Subject Transactions”) and (ii) in making any determination on a Pro Forma Basis, (x) all Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transactions and for which the financial effect is being calculated, whether incurred under this Agreement or otherwise, but excluding normal fluctuations in revolving Indebtedness incurred for working capital purposes) issued, incurred, assumed or permanently repaid during the Reference Period (or, unless otherwise specified, occurring during the Reference Period or thereafter and through and including the date of determination, if applicable) shall be deemed to have been issued, incurred, assumed or permanently repaid at the beginning of such period, and (y) interest charges attributable to interest on any Indebtedness, for which pro forma effect is being given as provided in preceding clause (x), bearing floating interest rates shall be computed on a pro forma basis as if the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination would have been in effect during the period for which pro forma effect is being given.

Pro forma calculations made pursuant to this shall be determined in good faith by an Authorized Officer of the Administrative Borrower and, to the extent applicable, in compliance with Section 1.07 and in connection with any Permitted Acquisition or other permitted Investment shall be based on the consolidated balance sheet of such acquired Person or business and its consolidated Subsidiaries as at the end of its most recent Fiscal Year or the most recent fiscal period preceding such Permitted Acquisition or other permitted Investment and the related consolidated statements of income and of cash flows for such period, which shall have been previously provided to Administrative Agent and shall either (1) have been reported on without a qualification arising out of the scope of the audit by independent certified public accountants of nationally recognized standing or (2) have been found reasonably acceptable by Administrative Agent.

In the case of any calculation for any event described above that occurs prior to the date on which financial statements have been (or are required to be) delivered for the Fiscal Quarter ended December 31, 2024, any such calculation required to be made on a “Pro Forma Basis” or “pro forma basis” shall use the Financial Statements for the Fiscal Quarter ended September 30, 2024. It is hereby agreed that for purposes of determining pro forma compliance with Section 7.03, if no Test Period with an applicable level cited in Section 7.03 has passed, the applicable level shall be the level for the first Test Period cited in Section 7.03 with an indicated level.

“Pro Rata Share” means, with respect to:

(a) a Lender’s obligation to make the Initial Term Loan and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender’s Initial Term Loan Commitment, by (ii) the aggregate Initial Term Loan Commitments of all Initial Term Lenders; provided that if the aggregate Initial Term Loan Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender’s portion of the Initial Term Loans and the denominator shall be the aggregate unpaid principal amount of the Initial Term Loans,

(b) a Lender’s obligation to make any Incremental Term Loan and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender’s Incremental Term Loan Commitment, by (ii) the aggregate Incremental Term Loan Commitments of all Incremental Term Lenders; provided that, if the aggregate Incremental Term Loan Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender’s portion of the Incremental Term Loans and the denominator shall be the aggregate unpaid principal amount of the Incremental Term Loans; and

(c) all other matters (including, the indemnification obligations arising under Section 10.05), the percentage obtained by dividing (i) the unpaid principal amount of such Lender’s portion of the Term Loans (including any Incremental Term Loans), by (ii) the aggregate unpaid principal amount of the Term Loans (including any Incremental Term Loans).

“Projections” means financial projections of the Parent and its Subsidiaries delivered pursuant to Section 6.01(g)(ii), as updated from time to time pursuant to Section 7.01(a)(vii).

“Purchase Price” means, with respect to any Acquisition, an amount equal to the sum of (a) the aggregate consideration, whether cash, property or securities (including the fair market value of any Equity Interests of any Loan Party or any of its Subsidiaries issued in connection with such Acquisition), paid or delivered by a Loan Party or any of its Subsidiaries (whether as initial consideration or through the payment or disposition of deferred consideration, including in the form of seller financing, royalty payments, payments allocated towards non-compete covenants, payments to principals for consulting services or other similar payments) in connection with such Acquisition, plus (b) the aggregate amount of liabilities of the acquired business (net of current assets of the acquired business) that would be reflected on a balance sheet (if such were to be prepared) of the Parent and its Subsidiaries after giving effect to such Acquisition.

“Qualified Cash” means, as of any date of determination, the aggregate amount of unrestricted cash of the Loan Parties maintained in deposit accounts which, on and after the date that is 60 days after the Effective Date, are subject to Control Agreements securing the Initial Term Loans and the ABL Facility.

“Qualified Equity Interests” means, with respect to any Person, all Equity Interests of such Person that are not Disqualified Equity Interests.

“Real Property Deliverables” means each of the following agreements, instruments and other documents in respect of each Facility, each in form and substance reasonably satisfactory to the Collateral Agent:

- (a) a Mortgage duly executed by the applicable Loan Party;
- (b) evidence of the recording of each Mortgage in such office or offices as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable to perfect the Lien purported to be created thereby or to otherwise protect the rights of the Collateral Agent and the Lenders thereunder;
- (c) a Title Insurance Policy or bring-down of the existing Title Insurance Policy with respect to each Mortgage, dated as of the Effective Date;
- (d) a current ALTA survey and a surveyor’s certificate, certified to the Collateral Agent and to the issuer of the Title Insurance Policy with respect thereto by a professional surveyor licensed in the state in which such Facility is located and reasonably satisfactory to the Collateral Agent; and
- (e) an opinion of counsel, satisfactory to the Collateral Agent, in the state where such Facility is located with respect to the enforceability of the Mortgage to be recorded and such other matters as the Collateral Agent may reasonably request.

“Recipient” means any Agent and any Lender, as applicable.

“Reference Rate” means, for any period, the greatest of (a) 3.50% per annum, (b) the Federal Funds Rate plus 0.50% per annum, (c) Adjusted Term SOFR (which rate shall be calculated based upon an Interest Period of one month) plus 1.00% per annum, and (d) the rate last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Reference Rate shall be effective from and including the date such change is publicly announced as being effective.

“Reference Rate Loan” means each portion of a Loan that bears interest at a rate determined by reference to the Reference Rate.

“Reference Rate Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“Register” has the meaning specified therefor in Section 12.07(f).

“Registered Intellectual Property” means Intellectual Property that is issued, registered, renewed or the subject of a pending application.

“Registered Loans” has the meaning specified therefor in Section 12.07(f).

“Regulation T”, “Regulation U” and “Regulation X” mean, respectively, Regulations T, U and X of the Board or any successor, as the same may be amended or supplemented from time to time.

“Related Fund” means, with respect to any Person, an Affiliate of such Person, or a fund or account managed by such Person or an Affiliate of such Person.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the direct and indirect equityholders, partners, directors, officers, employees, agents, consultants, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including the movement of Hazardous Materials through or in any environmental media, including the indoor or outdoor air, soil, surface or ground water, sediments or property.

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

“Remedial Action” means any action (a) to correct, mitigate, or address any actual, alleged or threatened violation of or non-compliance with any Environmental Law or Environmental Permit, or (b) to clean up, remove, remediate, mitigate, abate, contain, treat, monitor, assess, evaluate, investigate, prevent, minimize or in any other way address any environmental condition or the actual, alleged or threatened presence, Release or threatened Release of any Hazardous Materials (including the performance of pre-remedial studies and investigations and post-remedial operation and maintenance activities).

“Replacement Lender” has the meaning specified therefor in Section 12.02(c).

“Reportable Event” means an event described in Section 4043 of ERISA (other than an event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated under such Section).

“Required Lenders” means Lenders whose Pro Rata Shares (calculated in accordance with clause (c) of the definition thereof) aggregate at least 50.1%.

“Required Prepayment Date” has the meaning specified therefor in Section 2.05(g).

“Requirements of Law” means, with respect to any Person, collectively, the common law and any and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities), and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Restricted Payment” means (a) the declaration or payment of any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, together with any payment or distribution pursuant to a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, (b) the making of any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Loan Party, any Subsidiary or any direct or indirect parent of any Loan Party or any Subsidiary, now or hereafter outstanding, (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Equity Interests of any Loan Party or any Subsidiary, now or hereafter outstanding, or (d) the return of any Equity Interests to any shareholders or other equity holders of any Loan Party or any of its Subsidiaries, or the making of any other distribution of property, assets, shares of Equity Interests, warrants, rights, options, obligations or securities thereto as such.

“Sale and Leaseback Transaction” means, with respect to the Parent or any of its Subsidiaries, any arrangement, directly or indirectly, with any Person whereby the Parent or any of its Subsidiaries or Affiliates shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanctioned Country” means, at any time, a country or territory that is the subject or target of any Sanctions that broadly prohibit dealings with that country or territory (which, as of the Effective Date, include Crimea, Cuba, Iran, North Korea, Syria, the so-called Donetsk People’s Republic, and the so-called Luhansk People’s Republic).

“Sanctioned Person” means, at any time, (a) any Person listed in OFAC’s Specially Designated Nationals and Blocked Persons List, OFAC’s Sectoral Sanctions Identification List, and any other Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Germany, any other European Union member state, His Majesty’s Treasury of the United Kingdom, Canada, Australia, or other relevant sanctions authority, (b) a Person that resides in, or is organized in or located in a Sanctioned Country, (c) any Person with whom or with which a U.S. Person is prohibited from dealing under any of the Sanctions, or (d) any Person owned directly or indirectly, controlled by, or acting on behalf of any Person or Persons described in clause (a) or (b).

“Sanctions” means Requirements of Law concerning or relating to economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by OFAC, the U.S. Department of State, the European Union, Germany or any other European member state, His Majesty’s Treasury of the United Kingdom, Canada, Australia, or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

“Secured Party” means any Agent and any Lender.

“Securities Act” means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

“Securitization” has the meaning specified therefor in Section 12.07(l).

“Security Agreement” means a Pledge and Security Agreement, in form and substance satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties securing the Obligations.

“Security Breaches” has the meaning given to such term in Section 6.01(ii).

“Shared Cap” has the meaning given to such term in the definition of “Consolidated EBITDA”.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

“SOFR Borrowing” means, as to any Borrowing, the SOFR Loans comprising such Borrowing.

“SOFR Deadline” has the meaning specified therefor in Section 2.07(a).

“SOFR Loan” means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Reference Rate”.

“SOFR Notice” means a written notice substantially in the form of Exhibit D.

“SOFR Option” has the meaning specified therefor in Section 2.07(a).

“Solvent” means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person, at a fair valuation, is not less than the total amount of the debts and other liabilities of such Person (subordinated, contingent or otherwise), (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its existing debts and other liabilities (subordinated, contingent or otherwise), as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities (subordinated, contingent or otherwise) and other commitments, such debts, liabilities and commitments become absolute and matured, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital.

“Standard & Poor’s” means Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, Inc. and any successor thereto.

“Subordinated Indebtedness” means Indebtedness of any Loan Party the terms of which (including, payment terms, interest rates, covenants, remedies, defaults and other material terms) are satisfactory to the Collateral Agent and which has been expressly subordinated in right of payment to all Indebtedness of such Loan Party under the Loan Documents by the execution and delivery of a subordination agreement, in form and substance satisfactory to the Collateral Agent.

“Subsidiary” means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the Board of Directors of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association, joint venture or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person. References to a Subsidiary shall mean a Subsidiary of the Parent unless the context expressly provides otherwise.

“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.

“Tax Receivable Agreement” means the Tax Receivable Agreement, dated as of February 9, 2022, among Holdings, the Parent and the “Agent” as defined therein (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof).

“Termination Date” means the first date on which all of the Obligations are paid in full in cash and the Commitments of the Lenders are terminated.

“Term Loan” means an Initial Term Loan or Incremental Term Loan, as applicable and as the context may require.

“Term Loan Commitment” means an Initial Term Loan Commitment or an Incremental Term Loan Commitment, as applicable and as context may require.

“Term Loan Lender” means a Lender with a Term Loan Commitment or a Term Loan.

“Term Priority Collateral” shall have the meaning assigned to such term in the Intercreditor Agreement.

“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided that if as of 4:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three Business Days prior to such Periodic Term SOFR Determination Day; and

(b) for any calculation with respect to an Reference Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Reference Rate Term SOFR Determination Day”) that is two Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided that if as of 4:00 p.m. (New York City time) on any Reference Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three Business Days prior to such Reference Rate Term SOFR Determination Day;

provided that if Term SOFR as so determined shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its sole discretion).

“Term SOFR Borrowing” means, as to any Borrowing, the Loans bearing interest at a rate based on Adjusted Term SOFR comprising such Borrowing.

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

“Test Period” means, as of any date of determination, the four consecutive quarters of the Parent most recently ended as of such time for which financial statements are required to be delivered (or are actually delivered, if earlier) pursuant to Section 7.01(a)(ii) or Section 7.01(a)(iii); provided that for any date of determination before the delivery of the first financial statements pursuant to Section 7.01(a)(ii) or Section 7.01(a)(iii), the Test Period shall be the period of four consecutive quarters of the Parent most recently ended as of such time.

“Title Insurance Policy” means a mortgagee’s loan policy, in form and substance satisfactory to the Collateral Agent, together with all endorsements made from time to time thereto, issued to the Collateral Agent by or on behalf of a title insurance company selected by or otherwise satisfactory to the Collateral Agent, insuring the Lien created by a Mortgage in an amount and on terms and with such endorsements satisfactory to the Collateral Agent, delivered to the Collateral Agent.

“Total Net Leverage Ratio” means, with respect to the Parent and its Subsidiaries for any period, the ratio of (a) (i) the aggregate Funded Indebtedness of the Parent and its Subsidiaries as of the end of such period minus (ii) Qualified Cash in an aggregate amount not to exceed \$7,500,000 to (b) Consolidated EBITDA of the Parent and its Subsidiaries for such period.

“Total Term Loan Commitment” means the sum of the amounts of the Lenders’ Term Loan Commitments.

“Transactions” has the meaning specified therefor in the preamble hereto.

“Treasury Rate” means, with respect to any prepayment, a rate per annum (computed on the basis of actual days elapsed over a year of 360 days) equal to the rate determined by the Administrative Agent on the date three Business Days prior to the date of such prepayment, to be the yield expressed as a rate listed in The Wall Street Journal for United States Treasury securities most nearly equal to the period from the date of such prepayment, repayment or date of required repayment to and excluding the first anniversary of the Effective Date.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to Adjusted Term SOFR or the Reference Rate.

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

“Uniform Commercial Code” or “UCC” has the meaning specified therefor in Section 1.04.

“Up-Front Fees” means the amount of any fees or discounts received by lenders in connection with the making of loans or extensions of credit, expressed as a percentage of the face amount of any such loan or extension of credit.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001) as amended from time to time.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“VCOC Management Rights Agreement” has the meaning specified therefor in Section 5.01(d).

“Waivable Mandatory Prepayment” has the meaning specified therefor in Section 2.05(g).

“WARN” has the meaning specified therefor in Section 6.01(p).

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

“Withholding Agent” means any Loan Party and the Administrative Agent.

“Working Capital” means, at any date of determination thereof, (a) the sum, for any Person and its Subsidiaries, of (i) all current assets of such Person and its Subsidiaries in conformity with GAAP as at such date of determination (other than cash, Cash Equivalents, any Indebtedness owing to such Person or any of its Subsidiaries by Affiliates of such Person and the current portion of deferred tax assets), minus (b) the sum, for such Person and its Subsidiaries, of (i) all current liabilities of such Person and its Subsidiaries in conformity with GAAP as at such date of determination (other than the current portion of long-term debt and the current portion of all accrued interest and taxes).

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The word “or” is not exclusive and the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Section 1.03. Certain Matters of Construction.

(a) References in this Agreement to “determination” by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent, any agreement entered into by any Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase “to the knowledge of any Loan Party” or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer’s duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

(b) Any reference herein to a merger, consolidation, amalgamation, liquidation, winding up, dissolution, assignment, sale, lease, Investment, Disposition, Restricted Payment, conveyance or transfer, or similar term, shall be deemed to apply to a division (whether pursuant to a divisive merger, plan of division, or other comparable event under any jurisdiction's law) of or by a Person, or an allocation of assets to any Person or series of Persons, as if it were a merger, consolidation, amalgamation, liquidation, winding up, dissolution, assignment, sale, lease, Investment, Disposition, Restricted Payment, conveyance or transfer, or similar term, as applicable, to, of or with a separate Person. Any division (whether pursuant to a divisive merger, plan of division, or other comparable event under any jurisdiction's law) of a Person shall constitute a separate Person hereunder (and each division and series of any Person shall be treated as a separate Person hereunder, and such separate Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.04. Accounting and Other Terms.

(a) Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP. For purposes of determining compliance with any incurrence or expenditure tests set forth in Section 7.01, Section 7.02 and Section 7.03, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time). Notwithstanding the foregoing, (i) with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with FASB ASC 842 on the definitions and covenants herein, GAAP as in effect on December 31, 2015 shall be applied, (ii) for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded and (iii) with respect to revenue recognition and the impact of such accounting in accordance with FASB ASC 606 on the definitions and covenants herein, GAAP as in effect on December 31, 2017 shall be applied.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the “Uniform Commercial Code” or the “UCC”) and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine.

Section 1.05. Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight-saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”; provided that with respect to a computation of fees or interest payable to any Secured Party, such period shall in any event consist of at least one full day. Whenever any action or delivery to be taken or made under this Agreement or any other Loan Document shall be stated to be due on a day other than a Business Day, such action or delivery shall be deemed to be due on the next succeeding Business Day.

Section 1.06. Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Reference Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Reference Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of Reference Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its sole discretion to ascertain Reference Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.07. Certain Calculations and Tests. For purposes of calculating the Total Net Leverage Ratio, the Fixed Charge Coverage Ratio or Consolidated EBITDA, acquisitions, dispositions, mergers, consolidations, and disposed operations (as determined in accordance with GAAP) that have been made by the Parent or any Subsidiary during the Test Period or subsequent to such Test Period and on or prior to or simultaneously with the date of determination shall be calculated on a Pro Forma Basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations, and disposed operations (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the Test Period. If, during such period, any Person (that subsequently became a Subsidiary or was merged with or into the Parent or Restricted Subsidiary since the beginning of such period) shall have made any Investment, acquisition, disposition, merger, consolidation, or disposed operation that would have required adjustment pursuant to this Section or the definition of "Pro Forma Basis"; then the Total Net Leverage Ratio, Fixed Charge Coverage Ratio and Consolidated EBITDA shall be calculated giving Pro Forma Effect thereto for such Test Period as if such Investment, acquisition, disposition, merger, consolidation, or disposed operation had occurred at the beginning of the Test Period. Notwithstanding anything to the contrary set forth in this Section 1.07 or in the definition of Pro Forma Basis, when calculating the Total Net Leverage Ratio for purposes of (i) Section 2.05(c)(i), (ii) actual (but not pro forma) compliance with Section 7.03 and (iii) the Applicable Margin, the events described in this Section 1.07 and within the definition of Pro Forma Basis that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect. If Consolidated EBITDA is negative for any period, any applicable test or covenant that is based on the Total Net Leverage Ratio shall be deemed not satisfied as of the applicable date of determination.

Section 1.08. Divisions. Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

ARTICLE II

THE LOANS

Section 2.01. Commitments.

(a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth:

(i) each Initial Term Loan Lender severally and not jointly agrees to make the Initial Term Loan to the Borrowers on the Effective Date, in an aggregate principal amount not to exceed the amount of such Lender's Initial Term Loan Commitment; and

(ii) each Lender having an Incremental Term Loan Commitment severally and not jointly agrees, subject to the terms and conditions and relying upon the representations and warranties set forth herein and in the applicable Incremental Term Loan Assumption Agreement, to make Incremental Term Loans to the Borrowers, in an aggregate principal amount not to exceed such Lender's Incremental Term Loan Commitment.

(b) Notwithstanding the foregoing, the aggregate principal amount of the Initial Term Loan made on the Effective Date shall not exceed the Total Term Loan Commitment.

(c) Amounts paid or prepaid in respect of any Term Loan may not be reborrowed.

Section 2.02. Making the Loans. (a) The Administrative Borrower shall give the Administrative Agent prior written notice (in substantially the form of Exhibit C hereto (a "Notice of Borrowing")), not later than 12:00 noon (New York City time) on the date which is three Business Days prior to the date of the proposed Loan (or such shorter period as the Administrative Agent is willing to accommodate from time to time, but in no event later than 12:00 noon (New York City time) on the borrowing date of the proposed Loan). Such Notice of Borrowing shall be irrevocable and shall specify (i) the principal amount of the proposed Loan, (ii) whether such Loan is the Initial Term Loan or an Incremental Term Loan, (iii) whether the Loan is requested to be a Reference Rate Loan or a SOFR Loan and, in the case of a SOFR Loan, the initial Interest Period with respect thereto, (iv) the use of the proceeds of such proposed Loan, (v) the wire instructions for the proceeds of such proposed Loan and (vi) the proposed borrowing date, which must be a Business Day, and, with respect to the Initial Term Loan, must be the Effective Date. The Administrative Agent and the Lenders may act without liability upon the basis of any written notice believed by the Administrative Agent in good faith to be from the Administrative Borrower (or from any Authorized Officer thereof designated in writing purportedly from the Administrative Borrower to the Administrative Agent). The Administrative Agent and each Lender shall be entitled to rely conclusively on any Authorized Officer's authority to request a Loan on behalf of the Borrowers until the Administrative Agent receives written notice to the contrary. The Administrative Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing.

(b) Each Notice of Borrowing pursuant to this Section 2.02 shall be irrevocable and the Borrowers shall be bound to make a borrowing in accordance therewith.

(c) All Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares of the total Initial Term Loan Commitment or the total Incremental Term Loan Commitment, as the case may be, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a Loan requested hereunder, and each Lender shall be obligated to make the Loans required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

Section 2.03. Repayment of Loans; Evidence of Debt (a) The Borrowers shall pay to the Administrative Agent, for the account of the applicable Term Loan Lenders on the last Business Day of each March, June, September and December of each year, commencing on March 31, 2025, an aggregate principal amount of Term Loans equal to the applicable Amortization Amount (as adjusted from time to time pursuant to Sections 2.05(b)(i), Section 2.05(d) and Section 2.11(f)). The outstanding unpaid principal amount of the Term Loan, and all accrued and unpaid interest thereon, shall be due and payable on the earliest of (x)(I) with respect to the Term Loans (other than Other Term Loans), the Final Maturity Date and (II) with respect to the Other Term Loans, the applicable Incremental Term Loan Maturity Date in respect of such Other Term Loans, and (y) the date on which the Term Loan is declared due and payable pursuant to the terms of this Agreement.

(b) The Borrowers shall pay to the Administrative Agent, for the account of the Incremental Term Lenders, on each Incremental Term Loan Repayment Date, a principal amount of the Other Term Loans (as adjusted from time to time pursuant to Sections 2.05(b)(i), Section 2.05(d) and Section 2.11(f)) equal to the amount set forth for such date in the applicable Incremental Term Loan Assumption Agreement, together in each case with accrued and unpaid interest on the principal amount to be paid to the date of such payment.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to Section 2.03(b) or Section 2.03(c) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement and (ii) in the event of any conflict between the entries made in the accounts maintained pursuant to Section 2.03(b) and the accounts maintained pursuant to Section 2.03(c), the accounts maintained pursuant to Section 2.03(c) shall govern and control.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall execute and deliver to such Lender a promissory note payable such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in a form furnished by the Collateral Agent and reasonably acceptable to the Administrative Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.07) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.04. Interest.

(a) Term Loan. Subject to the terms of this Agreement, at the option of the Administrative Borrower, the Term Loan or any portion thereof shall be either a Reference Rate Loan or a SOFR Loan. Each portion of the Term Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the Reference Rate plus the Applicable Margin, and each portion of the Term Loan that is a SOFR Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the Adjusted Term SOFR rate for the Interest Period in effect for the Term Loan (or such portion thereof) plus the Applicable Margin.

(b) Default Interest. To the extent permitted by law and notwithstanding anything to the contrary in this Section, if (i) the Borrowers shall default in the payment of any principal of or interest on any Loan or any other amount due hereunder or under any other Loan Document, by acceleration or otherwise, or upon the occurrence of any Event of Default under Section 9.01(f) or 9.01(g), or (ii) if any Event of Default under Article VII (other than Section 9.01(a), 9.01(f) or 9.01(g)) has occurred and is continuing and the Required Lenders so vote, then, in the case of clause (i) above, until such defaulted amount shall have been paid in full or, in the case of clause (ii) above, from the date such vote has been exercised by the Required Lenders and for so long as such Event of Default is continuing, all amounts outstanding under this Agreement and the other Loan Documents shall bear interest (after as well as before judgment), payable on demand, at a rate per annum equal to all times to the Post-Default Rate.

(c) Interest Payment. Interest on each Loan shall be payable in cash (i) in the case of a Reference Rate Loan, monthly, in arrears, on the last Business Day of each month, commencing on the last Business Day of the month following the month in which such Loan is made, (ii) in the case of a SOFR Loan, on the last Business Day of each Interest Period applicable to such Loan and (iii) in the case of each Loan, at maturity (whether upon demand, by acceleration or otherwise). Interest at the Post-Default Rate shall be payable in cash on demand.

(d) General. All interest shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.

(e) Conforming Changes. In connection with the use or administration of Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Administrative Borrower and the Lenders prior to the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

Section 2.05. Reduction of Commitment; Prepayment of Loans.

(a) Reduction of Commitments. The Total Term Loan Commitment (other than any Incremental Term Loan Commitments, which shall terminate as provided in the related Incremental Term Loan Assumption Agreement) shall automatically terminate upon the making of the Initial Term Loan on the Effective Date. Notwithstanding the foregoing, all of the Commitments shall automatically terminate at 5:00 p.m. (New York City time) on the Effective Date if the initial borrowing shall not have occurred by such time.

(b) Optional Prepayment.

(i) Term Loan. The Borrowers may, at any time and from time to time, upon at least five Business Days' prior written notice to the Administrative Agent, prepay the principal of the Term Loan, in whole or in part. Each prepayment made pursuant to this Section 2.05(b)(i) shall be accompanied by the payment of (A) accrued interest to the date of such payment on the amount prepaid and (B) the Applicable Premium, if any, payable in connection with such prepayment of the Term Loan. Each such prepayment shall be applied against the remaining installments of principal due on the Term Loan in the inverse order of maturity.

(ii) Termination of Agreement. The Borrowers may, upon at least 30 days prior written notice to the Administrative Agent, terminate this Agreement by paying to the Administrative Agent, in cash, the Obligations, in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement; provided that such notice may provide that it is conditioned upon the consummation of other financing or the consummation of a sale of Equity Interests, in which case, such notice may be revoked or extended by the Borrowers if any such condition is not satisfied prior to the date of termination of this Agreement in such notice. If the Administrative Borrower has sent a notice of termination pursuant to this Section 2.05(b)(ii), then the Lenders' obligations to extend credit hereunder shall terminate and the Borrowers shall be obligated to repay the Obligations, in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice.

(c) Mandatory Prepayment.

(i) Within 10 days after the delivery to the Agents and the Lenders of audited annual financial statements pursuant to Section 7.01(a)(iii), commencing with the delivery to the Agents and the Lenders of the financial statements for the Fiscal Year ended December 31, 2025 or, if such financial statements are not delivered to the Agents and the Lenders on the date such statements are required to be delivered pursuant to Section 7.01(a)(iii), within 10 days after the date such statements are required to be delivered to the Agents and the Lenders pursuant to Section 7.01(a)(iii), the Borrowers shall prepay the outstanding principal amount of the Term Loans in accordance with Section 2.05(d) in an amount equal to the result of (to the extent positive) (1) the Applicable ECF Percentage of the Excess Cash Flow of the Parent and its Subsidiaries for such Fiscal Year minus (2) without duplication of any amounts deducted pursuant to clause (b)(i) of the definition of "Excess Cash Flow", the aggregate principal amount of all payments made by the Borrower pursuant to Section 2.05(b) and any other prepayments of Indebtedness (other than Indebtedness incurred under this Agreement) secured by Liens on the Collateral on a *pari passu* basis with the Liens on the Collateral securing the Obligations (but, in the case of revolving loans, only to the extent that the revolving credit commitment in respect thereof is permanently reduced by the amount of such payments) made by the Borrowers during such Fiscal Year, or after the end of such Fiscal Year and prior to the date that the financial statements with respect to such Fiscal Year are delivered to the Agents and the Lenders pursuant to Section 7.01(a)(iii); provided that no prepayment under this Section 2.05(c)(i) shall be required unless (x) the amount thereof exceeds the ECF Threshold Amount (and only any amount in excess of the ECF Threshold Amount shall be required to be prepaid) and (y) such prepayment is permitted by Section 2.3(b)(i)(B) of the Intercreditor Agreement; provided, further, that if the Specified Term Loan ECF Prepayment Conditions (as defined in the Intercreditor Agreement) are satisfied with respect to such prepayment, the Borrowers agree to deliver the certificate required by clause (b) of such definition to the Administrative Agent and the ABL Agent at least five Business Days prior to the date of such prepayment.

(ii) Within 10 days of any Disposition (excluding Dispositions which qualify as Permitted Dispositions under clauses (a), (b), (c), (d), (e), (f) or (g) of the definition of Permitted Disposition) by any Loan Party or its Subsidiaries, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such Disposition to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed for all such Dispositions \$1,500,000 in the aggregate for any Fiscal Year (it being agreed the Borrowers may retain all amounts below such threshold). Nothing contained in this Section 2.05(c)(ii) shall permit any Loan Party or any of its Subsidiaries to make a Disposition of any property other than in accordance with Section 7.02(c)(ii).

(iii) Upon the issuance or incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith. The provisions of this Section 2.05(c)(iii) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(iv) Within 10 days of the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith.

(v) Immediately upon receipt by the Borrowers of the proceeds of any Permitted Cure Equity pursuant to Section 9.02, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of such proceeds.

(vi) Notwithstanding the foregoing, Net Cash Proceeds received by any Loan Party or any of its Subsidiaries in connection with (x) a Disposition, (y) the receipt of Extraordinary Receipts consisting of casualty insurance proceeds or condemnation awards, and (z) the receipt of any other Extraordinary Receipts in an aggregate amount not to exceed \$1,000,000 during the term of this Agreement, in each case, that are required to be used to prepay the Obligations pursuant to Section 2.05(c)(ii) or Section 2.05(c)(iv), as the case may be, shall not be required to be so used to prepay the Obligations to the extent that such Net Cash Proceeds are used to replace, repair or restore properties or assets (other than current assets) used in the business of the Parent and its Subsidiaries; provided that (A) no Default or Event of Default has occurred and is continuing on the date such Person receives such Net Cash Proceeds, (B) the Administrative Borrower delivers a certificate to the Administrative Agent within 10 days after such Disposition or loss, destruction or taking, as the case may be, stating that such Net Cash Proceeds shall be used to replace, repair or restore properties or assets used in such Person's business (which certificate shall set forth estimates of the Net Cash Proceeds to be so expended), (C) such Net Cash Proceeds are so reinvested within 365 days after the date of receipt of such Net Cash Proceeds (or, if within such initial 365-day period, the Parent or its Subsidiaries enter into a binding commitment to reinvest such Net Cash Proceeds, such Net Cash Proceeds are so reinvested within 180 days after the date of such commitment), (D) such Net Cash Proceeds are deposited in an account subject to a Control Agreement, and (E) upon the earlier of (1) the expiration of such applicable reinvestment period or (2) the occurrence of an Event of Default, such Net Cash Proceeds, if not theretofore so used, shall be used to prepay the Obligations in accordance with Section 2.05(c)(ii) or Section 2.05(c)(iv) as applicable.

(d) Application of Payments. Each prepayment pursuant to Section 2.05(c)(i), 2.05(c)(ii), 2.05(c)(iii), 2.05(c)(iv) and 2.05(c)(v) above shall be applied to the Term Loan until paid in full. Each such prepayment of the Term Loan shall be applied against the remaining installments of principal of the Term Loan in the inverse order of maturity. Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, if the Administrative Agent has elected, or has been directed by the Collateral Agent or the Required Lenders, to apply payments in respect of any Obligations in accordance with Section 4.03(b), prepayments required under Section 2.05(c) shall be applied in the manner set forth in Section 4.03(b).

(e) Interest and Fees. Any prepayment made pursuant to this Section 2.05 shall be accompanied by (i) accrued interest on the principal amount being prepaid to the date of prepayment, (ii) any Funding Losses payable pursuant to Section 2.08, (iii) the Applicable Premium, if any, payable in connection with such prepayment of the Loans and (iv) if such prepayment would reduce the amount of the outstanding Loans to zero, such prepayment shall be accompanied by the payment of all fees accrued to such date pursuant to Section 2.06.

(f) Cumulative Prepayments. Except as otherwise expressly provided in this Section 2.05, payments with respect to any subsection of this Section 2.05 are in addition to payments made or required to be made under any other subsection of this Section 2.05.

(g) Waivable Mandatory Prepayments. Anything contained herein to the contrary notwithstanding, in the event that the Borrowers are required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") of the Loans pursuant to Section 2.05(c), not less than five Business Day prior to the date on which the Borrowers are required to make such Waivable Mandatory Prepayment (the "Required Prepayment Date"), the Administrative Borrower shall notify the Administrative Agent in writing of the amount of such prepayment, and the Administrative Agent will promptly thereafter notify each Lender of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and such Lender's option to refuse such amount. Each such Lender may exercise such option by giving written notice to the Administrative Borrower and the Administrative Agent of its election to do so on or before 12:00 noon (New York City time) one Business Day prior to the Required Prepayment Date (it being understood that any Lender that does not notify the Administrative Borrower and the Administrative Agent of its election to exercise such option on or before 12:00 noon (New York City time) one Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, the Borrowers shall pay to the Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, to prepay the Loans of such Lenders (which prepayment shall be applied to prepay the outstanding principal amount of the Obligations in accordance with Section 2.05(d)) and (ii) to the extent of any excess, to the Borrowers for working capital and general corporate purposes.

Section 2.06. Fees.

(a) Fee Letter. The Borrowers agree to pay to the Administrative Agent and the Lenders all fees due and payable under the Fee Letter at the times and in the amounts specified therein.

(b) Applicable Premium.

(i) Upon the occurrence of an Applicable Premium Trigger Event, the Borrowers shall pay to the Administrative Agent, for the account of the Lenders in accordance with their Pro Rata Shares, the Applicable Premium.

(ii) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, it is understood and agreed that if any Loans are accelerated (whether as a result of the occurrence and continuance of any Event of Default, by operation of law or otherwise), any Applicable Premium on such Loans, determined as of the date of acceleration, will also be due and payable and will be treated and deemed as though the applicable Loans were repaid as of such date and shall constitute part of the Obligations for all purposes herein. Any Applicable Premium shall also be payable in the event the Obligations, the Loans and this Agreement are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other similar means. Any Applicable Premium payable in accordance with this Section 2.06(b) shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Applicable Premium Trigger Event and the Loan Parties agree that it is reasonable under the circumstances currently existing. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM IN CONNECTION WITH ANY ACCELERATION.

(iii) The Loan Parties expressly agree that: (A) the Applicable Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Applicable Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Applicable Premium; (D) the Applicable Premium is not intended to act as a penalty or to punish the Loan Parties for any repayment or redemption of the Loans; (E) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph; (F) their agreement to pay the Applicable Premium is a material inducement to Lenders to provide the Commitments and make the Loans; and (G) the Applicable Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Agents and the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Agents and the Lenders or profits lost by the Agents and the Lenders as a result of such Applicable Premium Trigger Event.

(iv) Nothing contained in this Section 2.06(b) shall permit any prepayment of the Loans or reduction of the Commitments not otherwise permitted by the terms of this Agreement or any other Loan Document.

Section 2.07. SOFR Option; Suspension of SOFR Option; Benchmark Transition

(a) The Borrowers (or the Administrative Borrower on behalf of the Borrowers) may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect to have interest on all or a portion of the Loans be charged at a rate of interest based upon Adjusted Term SOFR (the "SOFR Option") by notifying the Administrative Agent prior to 11:00 a.m. (New York City time) at least three Business Days prior to (or such shorter period as the Administrative Agent is willing to accommodate) (i) the proposed borrowing date of a Loan (as provided in Section 2.02), (ii) in the case of the conversion of a Reference Rate Loan to a SOFR Loan, the commencement of the proposed Interest Period or (iii) in the case of the continuation of a SOFR Loan as a SOFR Loan, the last day of the then current Interest Period (the "SOFR Deadline"). Notice of the Borrowers' election of the SOFR Option for a permitted portion of the Loans and an Interest Period pursuant to this Section 2.07(a) shall be made by delivery to the Administrative Agent of (A) a Notice of Borrowing (in the case of the initial making of a Loan) in accordance with Section 2.02 or (B) a SOFR Notice prior to the SOFR Deadline (by delivery to the Administrative Agent of a SOFR Notice received by the Administrative Agent prior to 5:00 p.m. (New York City time) on the same day) (or such shorter period as the Administrative Agent is willing to accommodate). Promptly upon its receipt of each such SOFR Notice, the Administrative Agent shall provide a copy thereof to each of the Lenders. Each SOFR Notice shall be irrevocable and binding on the Borrowers.

(b) Interest on SOFR Loans shall be payable in accordance with Section 2.04(d). On the last day of each applicable Interest Period, unless the Borrowers properly have exercised the SOFR Option with respect thereto, the interest rate applicable to such SOFR Loans automatically shall convert to the rate of interest then applicable to Reference Rate Loans of the same type hereunder. At any time that a Default or an Event of Default has occurred and is continuing, the Borrowers no longer shall have the option to request that any portion of the Loans bear interest at Adjusted Term SOFR and the Administrative Agent shall have the right to convert the interest rate on all outstanding SOFR Loans to the rate of interest then applicable to Reference Rate Loans of the same type hereunder on the last day of the then current Interest Period.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrowers (i) shall have not more than five SOFR Loans in effect at any given time, and (ii) only may exercise the SOFR Option for SOFR Loans of at least \$500,000 and integral multiples of \$100,000 in excess thereof.

(d) The Borrowers may prepay SOFR Loans at any time; provided, however, that in the event that SOFR Loans are prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any mandatory prepayment pursuant to Section 2.05(c) or any application of payments or proceeds of Collateral in accordance with Section 4.03 or Section 4.04 or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, the Borrowers shall indemnify, defend, and hold the Agents and the Lenders and their participants harmless against any and all Funding Losses in accordance with Section 2.08.

(e) [Reserved].

(f) [Reserved].

(g) If the Administrative Agent shall have determined in good faith that for any reason adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan or that the Adjusted Term SOFR rate applicable pursuant to Section 2.03 for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to the Lenders of funding or maintaining such Loan, the Administrative Agent will forthwith give notice of such determination to the Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain SOFR Loans hereunder shall be suspended (to the extent of the affected SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) until the Administrative Agent revokes such notice in writing. Upon receipt of such notice, the Borrowers may revoke any Notice of Borrowing or notice of conversion or continuation of SOFR Loans (to the extent of the affected SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) then submitted by it. If the Borrowers do not revoke such notice, the Lenders shall make, convert or continue the Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Loans shall be made, converted or continued as Reference Rate Loans immediately or, in the case of a Term SOFR Borrowing, at the end of the applicable Interest Period.

(h) Benchmark Replacement Setting. Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrowers may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrowers so long as Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.07(h)(i) will occur prior to the applicable Benchmark Replacement Date.

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

(iii) Notices; Standards for Decisions and Determinations The Administrative Agent will promptly notify the Administrative Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Administrative Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.07(h)(i) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.07, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.07.

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Administrative Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Administrative Borrower may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Administrative Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Reference Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Reference Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Reference Rate.

(i) Illegality.

(i) If after the Effective Date, any Lender shall determine that the introduction of any Requirement of Law, or any change in any Requirement of Law or in the interpretation or administration thereof, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its lending office to make SOFR Loans, then, on notice thereof by such Lender to the Administrative Borrower through the Administrative Agent, the obligation of that Lender to make SOFR Loans shall be suspended until such Lender shall have notified the Administrative Agent and the Administrative Borrower that the circumstances giving rise to such determination no longer exists.

(ii) Subject to clause (iii) below, if any Lender shall determine that it is unlawful to maintain any SOFR Loan, the Borrowers shall prepay in full all SOFR Loans of such Lender then outstanding, together with interest accrued thereon, either on the last day of the Interest Period, as applicable, thereof if such Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans, together with any amounts required to be paid hereunder.

(iii) If the obligation of any Lender to make or maintain SOFR Loans has been terminated, the Borrowers may elect, by giving notice to such Lender through Administrative Agent that all Loans which would otherwise be made by any such Lender as SOFR Loans shall be instead Reference Rate Loans.

(iv) Before giving any notice to the Administrative Agent pursuant to this Section 2.07(i), the affected Lender shall designate a different lending office with respect to its SOFR Loans if such designation will avoid the need for giving such notice or making such demand and will not, in the judgment of the Lender, be illegal or otherwise disadvantageous to the Lender.

(j) Reserves on SOFR Loans. The Borrowers shall pay to each Lender, as long as such Lender shall be required under regulations of the Federal Reserve Board to maintain reserves with respect to liabilities or assets consisting of or including SOFR funds or deposits, additional costs on the unpaid principal amount of each SOFR Loan equal to actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), payable on each date on which interest is payable on such Loan provided the Borrowers shall have received at least 15 days' prior written notice (with a copy to the Administrative Agent) of such additional interest from the Lender. If a Lender fails to give notice 15 days prior to the relevant Interest Payment Date, such additional interest shall be payable 15 days from receipt of such notice. Notwithstanding anything to the contrary contained in this Section 2.07(j), the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.07(j) for any additional interest incurred, or relating to Loans made, more than nine months prior to the date that such Lender notifies the Administrative Borrower of the requirement to pay such additional interest (except that, if the requirements under the regulations of the Federal Reserve Board giving rise to such additional interest is retroactive, then the nine month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.08. Funding Losses. In connection with each SOFR Loan, the Borrowers shall indemnify, defend, and hold the Agents and the Lenders harmless against any loss, cost, or expense incurred by any Agent or any Lender as a result of (a) the payment of any principal of any SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or any mandatory prepayment required pursuant to Section 2.05(c)), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), or (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any Notice of Borrowing or SOFR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to any Agent or any Lender, be deemed to equal the amount reasonably determined by such Agent or such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such SOFR Loan had such event not occurred, at the SOFR Loan that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period therefor), minus (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Agent or such Lender would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of an Agent or a Lender delivered to the Administrative Borrower setting forth any amount or amounts that such Agent or such Lender is entitled to receive pursuant to this Section 2.08 shall be conclusive absent manifest error.

Section 2.09. Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any and all Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of any Withholding Agent) requires the deduction or withholding of any Taxes from or in respect of any such payment, (i) the applicable Withholding Agent shall make such deduction or withholding, (ii) the applicable Withholding Agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and (iii) if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased by the amount (an "Additional Amount") necessary such that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 2.09) the applicable Recipient receives the amount equal to the sum it would have received had no such deduction or withholding been made.

(b) In addition, each Loan Party shall pay to the relevant Governmental Authority in accordance with applicable law any Other Taxes, or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes by any Secured Party. Each Loan Party shall deliver to each Secured Party official receipts in respect of any Taxes or Other Taxes payable hereunder promptly after payment of such Taxes or Other Taxes.

(c) The Loan Parties hereby jointly and severally indemnify and agree to hold each Secured Party harmless from and against Indemnified Taxes (including Indemnified Taxes imposed on any amounts payable under this Section 2.09) paid or payable by such Secured Party or required to be withheld or deducted from a payment to such Secured Party and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. Such indemnification shall be paid within ten days from the date on which any such Person makes written demand therefore specifying in reasonable detail the nature and amount of such Indemnified Taxes. A certificate as to the amount of such payment or liability delivered to the Administrative Borrower by a Secured Party (with a copy to the Administrative Agent) or by the Administrative Agent on its own behalf or on behalf of another Secured Party shall be conclusive absent manifest error.

(d) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Administrative Borrower and the Administrative Agent, at the time or times reasonably requested by the Administrative Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Administrative Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Administrative Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Administrative Borrower or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.09(d)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Administrative Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Lender that is not a U.S. Person (a "Foreign Lender") shall, to the extent it is legally entitled to do so, deliver to the Administrative Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit 2.09(d)-1 hereto to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of the Borrowers within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.09(d)-2 or Exhibit 2.09(d)-3, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.09(d)-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Administrative Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal 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 Internal Revenue Code, as applicable), such Lender shall deliver to the Administrative Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Administrative Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Administrative Borrower or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their 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.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Administrative Agent in writing of its legal inability to do so.

(e) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.07(i) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.09 (including by the payment of Additional Amounts pursuant to this Section 2.09), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.09 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) The obligations of the Loan Parties under this Section 2.09 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.10. Increased Costs and Reduced Return. (a) If any Secured Party shall have determined that any Change in Law shall (i) subject such Secured Party, or any Person controlling such Secured Party to any tax, duty or other charge with respect to this Agreement or any Loan made by such Agent or such Lender, or change the basis of taxation of payments to such Secured Party or any Person controlling such Secured Party of any amounts payable hereunder (except for (x) Other Connection Taxes that are imposed on or measured by net income (however denominated), or that are franchise Taxes or branch profits Taxes, (y) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (z) Indemnified Taxes), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any Loan or against assets of or held by, or deposits with or for the account of, or credit extended by, such Secured Party or any Person controlling such Secured Party or (iii) impose on such Secured Party or any Person controlling such Secured Party any other condition (other than Taxes) regarding this Agreement or any Loan, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Secured Party of making any Loan, or agreeing to make any Loan, or to reduce any amount received or receivable by such Secured Party hereunder, then, upon demand by such Secured Party, the Borrowers shall pay to such Secured Party such Additional Amounts as will compensate such Secured Party for such increased costs or reductions in amount. However, if any such Secured Party requests such Additional Amounts under this Section 2.10, then such Secured Party shall (at the request of the Borrowers) use reasonable efforts (which shall not require such Secured Party to incur an unreimbursed loss or unreimbursed cost or expense or otherwise take any action inconsistent with its internal policies or legal or regulatory restrictions or suffer any disadvantage or burden deemed by it to be significant) to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Secured Party, such designation or assignment would eliminate or reduce amounts payable pursuant to this Section 2.10 in the future. The Loan Parties hereby agree to pay all reasonable and documented costs and expenses incurred by any Secured Party in connection with any such designation or assignment.

(b) If any Secured Party shall have determined that any Change in Law either (i) affects or would affect the amount of capital required or expected to be maintained by such Secured Party or any Person controlling such Secured Party, and such Secured Party determines that the amount of such capital is increased as a direct or indirect consequence of any Loans made or maintained, such Secured Party's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Secured Party's or such other controlling Person's capital to a level below that which such Secured Party or such controlling Person could have achieved but for such circumstances as a consequence of any Loans made or maintained, or any agreement to make Loans, or such Secured Party's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Secured Party's or such other controlling Person's policies with respect to capital adequacy), then, upon demand by such Secured Party, the Borrowers shall pay to such Secured Party from time to time such Additional Amounts as will compensate such Secured Party for such cost of maintaining such increased capital or such reduction in the rate of return on such Secured Party's or such other controlling Person's capital.

(c) All amounts payable under this Section 2.10 shall bear interest from the date that is 10 days after the date of demand by any Secured Party until payment in full to such Secured Party at the Reference Rate. A certificate of such Secured Party claiming compensation under this Section 2.10, specifying the event herein above described and the nature of such event shall be submitted by such Secured Party to the Administrative Borrower, setting forth the Additional Amount due and an explanation of the calculation thereof, and such Secured Party's reasons for invoking the provisions of this Section 2.10, and shall be final and conclusive absent manifest error.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.10 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.10 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Administrative 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) The obligations of the Loan Parties under this Section 2.10 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(f) If any Secured Party requests compensation under this Section 2.10 and has declined or is unable to designate a different lending office in accordance with paragraph (a) of this Section 2.10, or if any Secured Party is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Secured Party and the Administrative Agent, require such Secured Party to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.07), all (but not less than all) of its interests, rights (other than its existing rights to payments pursuant to this Section 2.10) and obligations under this Agreement and the related Loan Documents to an eligible assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment in its sole discretion); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.07;

(ii) such Secured Party shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Sections 2.08 and 2.09 and the Applicable Premium pursuant to Section 2.06(b), with such assignment being deemed to be a voluntary prepayment for purposes of determining the applicability of Section 2.06(b)) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.10, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable law;

provided that a Secured Party shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Secured Party or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply or, in the case of any Defaulting Lender, such Lender ceases to be a Defaulting Lender hereunder, as applicable. Each Lender grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender, as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this Section.

(g) Notwithstanding anything in this Section 2.10 to the contrary, the Secured Party that acts as an Agent may not be replaced hereunder except in accordance with the terms of Section 10.07.

Section 2.11. Incremental Term Loans.

(a) The Borrowers may, by written notice to the Administrative Agent from time to time, request Incremental Term Loan Commitments in an amount not to exceed the Incremental Term Loan Amount from one or more Incremental Term Lenders, all of which must be an eligible assignee pursuant to, and subject to the consents of the Agents, provided in, Section 12.07. Such notice shall set forth (i) the amount of the Incremental Term Loan Commitments being requested (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$5,000,000 or such lesser amount equal to the remaining Incremental Term Loan Amount), (ii) the date on which such Incremental Term Loan Commitments are requested to become effective (which shall not be less than 10 Business Days nor more than 60 days after the date of such notice), and (iii) whether such Incremental Term Loan Commitments are commitments to make additional Term Loans (with the same terms as the Term Loans funded on the Effective Date) or commitments to make term loans in new tranche with terms different from the Term Loans ("Other Term Loans").

(b) The effectiveness of any Incremental Term Loan Commitments and the Incremental Term Loans shall be subject to the satisfaction of each of the following conditions:

(i) No Default or Event of Default shall exist before and after giving effect to such Incremental Term Loan Commitments and Incremental Term Loans and the representations and warranties in Article VI shall be true and correct in all material respects (or to the extent qualified as to materiality, all respects) on and as of the date of the incurrence of such Incremental Term Loan Commitments and the Incremental Term Loans (although any representations or warranties which expressly relate to a given date or period shall be required only to be true and correct in all material respects (or to the extent qualified as to materiality, all respects) as of the respective date or for the respective period, as the case may be);

(ii) the aggregate amount of all Incremental Term Loan Commitments shall not exceed the Incremental Term Loan Amount;

(iii) the Total Net Leverage Ratio, determined on a pro forma basis as of the last day of the most recently ended Test Period, after giving effect to such Incremental Term Loan Commitments (assuming that the Incremental Term Loans under such Incremental Term Loan Commitments have been fully funded on such day), shall be no greater than 2.00 to 1.00; and

(iv) the proceeds of the Incremental Term Loans shall only be used for working capital purposes, including to finance Permitted Acquisitions and Capital Expenditures.

(c) The Borrowers may seek Incremental Term Loan Commitments from existing Lenders (each of which shall be entitled to agree or decline to participate in its sole discretion) and (subject to the consents of the Agents provided in Section 12.07) additional banks, financial institutions and other institutional lenders who will become Incremental Term Lenders in connection therewith; provided that (x) each request for an Incremental Term Loan Commitment shall first be offered on a pro rata basis to the then-existing Lenders in accordance with their respective Pro Rata Shares prior to being offered to any other Person, (2) any Lender approached to provide all or a portion of the Incremental Term Loan Commitments may elect to agree or to decline to provide an Incremental Term Loan Commitment (provided that if such Lender declines to provide the full amount of the requested Incremental Term Loan Commitment, or agrees to, but does not timely provide, the full amount of such Incremental Term Loan Commitment, then the portion of such Incremental Term Loan Commitments offered to such declining Lender shall be offered, on a pro rata basis, to each Lender that has agreed to provide Incremental Term Loan Commitments; provided, further, that if the then-existing Lenders do not agree to provide 100% of the requested Incremental Term Loan Commitments, the Borrowers may seek Incremental Term Loan Commitments from another Person in respect of any requested Incremental Term Loan Commitments that the then-existing Lenders have not agreed to provide), and (z) if such Lenders have not responded to the request to provide such Incremental Commitment, in each case within 10 Business Days of the date such request is made, the Borrowers may request such Incremental Term Loan Commitment (or such declined portion thereof) from another Person (subject to the consents of the Agents and other requirements for eligible assignees provided in Section 12.07).

(d) The Borrowers and each Incremental Term Lender shall execute and deliver to the Administrative Agent an Incremental Term Loan Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Term Loan Commitment of each Incremental Term Lender. The terms and provisions of the Incremental Term Loans shall be identical to those of the Initial Term Loans except as otherwise set forth herein or, in the case of Other Term Loans, in the Incremental Term Loan Assumption Agreement; provided that, (A) without the prior written consent of the Required Lenders, (x) the final maturity date of any Other Term Loans shall be no earlier than the Final Maturity Date and (ii) the Weighted Average Life to Maturity of the Other Term Loans shall be no shorter than the Weighted Average Life to Maturity of the Term Loans at such time, (B) if the Initial Yield applicable to Other Term Loans secured on a pari passu basis with the Initial Term Loans exceeds by more than 50 basis points (the amount of such excess above 50 basis points being referred to herein as the “Yield Differential”) the sum of the Applicable Margin then in effect for SOFR Loans plus the Up-Front Fees paid in respect of the Initial Term Loans, then the Applicable Margin then in effect for Initial Term Loans shall automatically be increased by the Yield Differential, effective upon the making of the Other Term Loans, and (C) except as otherwise required or permitted in sub-clauses (A) and (B) above, all other terms of such Other Term Loans, if not identical to the terms of the Initial Term Loans, shall be satisfactory to the Administrative Agent and the Required Lenders in their sole discretion. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Term Loan Assumption Agreement. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Term Loan Assumption Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Term Loan Commitment and the Incremental Term Loans evidenced thereby, and the Agents and the Borrowers may revise this Agreement to evidence such amendments.

(e) Notwithstanding the foregoing, no Incremental Term Loan Commitment shall become effective under this Section unless (i) on the date of such effectiveness, the conditions set forth in Section 2.11(b) and Section 5.02(b) shall be satisfied and the Agents shall have received a certificate to that effect dated such date and executed by an Authorized Officer of the Administrative Borrower, and (ii) except as otherwise specified in the applicable Incremental Term Loan Assumption Agreement, the Agents shall have received legal opinions, board resolutions and other closing certificates reasonably requested by any Agent and consistent with those delivered on the Effective Date under Section 5.01.

(f) Each of the parties hereto hereby agrees that the Agents may, in consultation with the Administrative Borrower, take any and all action as may be reasonably necessary to ensure that all Incremental Term Loans (other than Other Term Loans), when originally made, are included in each Borrowing of outstanding Term Loans on a *pro rata* basis. This may be accomplished by requiring each outstanding borrowing of SOFR Loans to be converted into Reference Rate Loans on the date of each Incremental Term Loan, or by allocating a portion of each Incremental Term Loan to each outstanding borrowing of SOFR Loans on a *pro rata* basis. Any conversion of any SOFR Loans to Reference Rate Loans required by the preceding sentence shall be subject to Section 2.08. If any Incremental Term Loan is to be allocated to an existing Interest Period for a SOFR Borrowing, then the interest rate thereon for such Interest Period and the other economic consequences thereof shall be as set forth in the applicable Incremental Term Loan Assumption Agreement. In addition, to the extent any Incremental Term Loans are not Other Term Loans, the scheduled amortization payments under Section 2.03(b)(i) required to be made after the making of such Incremental Term Loans shall be ratably increased by the aggregate principal amount of such Incremental Term Loans and shall be further increased for all Lenders on a *pro rata* basis to the extent necessary to avoid any reduction in the amortization payments to which the Term Loan Lenders were entitled before such recalculation.

ARTICLE III

INTENTIONALLY OMITTED

ARTICLE IV

APPLICATION OF PAYMENTS; DEFAULTING LENDERS; JOINT AND SEVERAL LIABILITY OF BORROWERS

Section 4.01. Payments; Computations and Statements. The Borrowers will make each payment under this Agreement not later than 12:00 noon (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Accounts. All payments received by the Administrative Agent after 12:00 noon (New York City time) on any Business Day may, in the Administrative Agent's sole discretion, be deemed received on the next succeeding Business Day. All payments shall be made by the Borrowers without set-off, counterclaim, recoupment, deduction or other defense to the Agents and the Lenders. Except as provided in Section 2.02, after receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement. Whenever any payment to be made under any such Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

Section 4.02. Sharing of Payments. Except as provided in Section 2.02 hereof, if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid by the purchasing Lender in respect of the total amount so recovered and (b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender and any payment of an amendment, consent or waiver fee to consenting Lenders pursuant to an effective amendment, consent or waiver with respect to this Agreement), or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrowers agree that any Lender so purchasing a participation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all of its rights (including the Lender's right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrowers in the amount of such participation.

Section 4.03. Apportionment of Payments. Subject to Section 2.02 hereof:

(a) All payments of principal and interest in respect of outstanding Loans, all payments of fees (other than the Agency Fee) and all other payments in respect of any other Obligations, shall be allocated by the Administrative Agent among such of the Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Loans, as designated by the Person making payment when the payment is made.

(b) After the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and upon the direction of the Collateral Agent or the Required Lenders shall, apply all payments in respect of any Obligations, including all proceeds of the Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Agents until paid in full; (ii) second, to pay interest then due and payable in respect of the Collateral Agent Advances until paid in full; (iii) third, to pay principal of the Collateral Agent Advances until paid in full; (iv) fourth, ratably to pay the Obligations in respect of any fees (other than any Applicable Premium), expense reimbursements, indemnities and other amounts then due and payable to the Lenders until paid in full; (v) fifth, ratably to pay interest then due and payable in respect of the Loans until paid in full; (vi) sixth, ratably to pay principal of the Loans until paid in full; (vii) seventh, ratably to pay the Obligations in respect of any Applicable Premium then due and payable to the Lenders until paid in full; (viii) eighth, to the ratably payment of all other Obligations then due and payable until paid in full; and (ix) last, the balance, if any, after all of the Obligations have been indefeasibly paid in full in cash, to the Borrowers or as otherwise required by applicable law.

(c) For purposes of Section 4.03(b), "paid in full" means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(d) In the event of a direct conflict between the priority provisions of this Section 4.03 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of Section 4.03 shall control and govern.

Section 4.04. Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 12.02.

(b) The Administrative Agent shall not be obligated to transfer to such Defaulting Lender any payments made by any Borrower to the Administrative Agent for such Defaulting Lender's benefit, and, in the absence of such transfer to such Defaulting Lender, the Administrative Agent shall transfer any such payments to each other non-Defaulting Lender ratably in accordance with their Pro Rata Shares (without giving effect to the Pro Rata Shares of such Defaulting Lender) (but only to the extent that such Defaulting Lender's Loans were funded by the other Lenders) or, if so directed by the Administrative Borrower and if no Default or Event of Default has occurred and is continuing (and to the extent such Defaulting Lender's Loans were not funded by the other Lenders), retain the same to be re-advanced to the Borrowers as if such Defaulting Lender had made such Loans to the Borrowers. Subject to the foregoing, the Administrative Agent may hold and, in its discretion, re-lend to the Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by the Administrative Agent for the account of such Defaulting Lender.

(c) Any such failure to fund by any Defaulting Lender shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrowers to replace the Defaulting Lender with one or more substitute Lenders approved by the Agents, and the Defaulting Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Defaulting Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Defaulting Lender shall execute and deliver an Assignment and Acceptance, subject only to the Defaulting Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Defaulting Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Defaulting Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Defaulting Lender shall be made in accordance with the terms of Section 12.07.

(d) The operation of this Section shall not be construed to increase or otherwise affect the Commitments of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to the Administrative Agent or to the Lenders other than such Defaulting Lender.

(e) This Section shall remain effective with respect to such Lender until either (i) the Obligations under this Agreement shall have been declared or shall have become immediately due and payable or (ii) the non-Defaulting Lenders, the Agents, and the Borrowers shall have waived such Defaulting Lender's default in writing, and the Defaulting Lender makes its Pro Rata Share of the applicable defaulted Loans and pays to the Agents all amounts owing by such Defaulting Lender in respect thereof; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while such Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

Section 4.05. Administrative Borrower: Joint and Several Liability of the Borrowers

(a) Each Borrower hereby irrevocably appoints Black Rifle Coffee Company LLC as the borrowing agent and attorney-in-fact for the Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until the Agents shall have received prior written notice signed by all of the Borrowers that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (i) to provide to the Agents and receive from the Agents all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Collateral of the Borrowers in a combined fashion, as more fully set forth herein, is done solely as an accommodation to the Borrowers in order to utilize the collective borrowing powers of the Borrowers in the most efficient and economical manner and at their request, and that neither the Agents nor the Lenders shall incur liability to the Borrowers as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group.

(b) Each Borrower hereby accepts joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Agents and the Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations. Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 4.05), it being the intention of the parties hereto that all of the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them. If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation. Subject to the terms and conditions hereof, the Obligations of each of the Borrowers under the provisions of this Section 4.05 constitute the absolute and unconditional, full recourse Obligations of each of the Borrowers, enforceable against each such Person to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement, the other Loan Documents or any other circumstances whatsoever.

(c) The provisions of this Section 4.05 are made for the benefit of the Agents, the Lenders and their successors and assigns, and may be enforced by them from time to time against any or all of the Borrowers as often as occasion therefor may arise and without requirement on the part of the Agents, the Lenders or such successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any of the other Borrowers or to exhaust any remedies available to it or them against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 4.05 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied.

(d) Each of the Borrowers hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Borrowers with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agents or the Lenders with respect to any of the Obligations or any Collateral, until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Agents or the Lenders hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations.

ARTICLE V

CONDITIONS TO LOANS

Section 5.01. Conditions Precedent to Effectiveness. This Agreement shall become effective as of the Business Day (the "Effective Date") when each of the following conditions precedent shall have been satisfied in a manner satisfactory to the Agents:

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Effective Date all fees, costs, expenses (including the fees and expenses of legal counsel) and taxes then payable pursuant to Section 2.06 and Section 12.04 (which amounts may be offset against the proceeds of the Loans).

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the Effective Date are true and correct on and as of the Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(c) Legality. The making of the initial Loans shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Delivery of Documents. The Collateral Agent shall have received on or before the Effective Date the following, each in form and substance satisfactory to the Collateral Agent and, unless indicated otherwise, dated the Effective Date and, if applicable, duly executed by the Persons party thereto:

(i) this Agreement;

(ii) the Fee Letter;

(iii) a Security Agreement, together with the original stock certificates representing all of the Equity Interests and all promissory notes required to be pledged thereunder, accompanied by undated stock powers executed in blank by a duly authorized officer of the pledgor thereof and other proper instruments of transfer;

(iv) the results of searches for any effective UCC financing statements, tax Liens or judgment Liens filed against any Loan Party or its property, which results shall not show any such Liens (other than Permitted Liens acceptable to the Collateral Agent or Liens that have been or will be contemporaneously released or terminated as of the Effective Date);

- (v) a Perfection Certificate;
- (vi) the Intellectual Property Security Agreements;
- (vii) the Disbursement Letter;
- (viii) the Intercompany Subordination Agreement;
- (ix) the Intercreditor Agreement;

(x) the management rights letter, dated as of the date hereof, among the Borrowers and the Agents (as amended, amended and restated, supplemented or otherwise modified from time to time, the "VCOC Management Rights Agreement");

(xi) a certificate of an Authorized Officer of each Loan Party, certifying (A) as to copies of the Governing Documents of such Loan Party, together with all amendments thereto (including a true and complete copy of the charter, certificate of formation, certificate of limited partnership or other publicly filed organizational document of each Loan Party certified as of a recent date not more than 30 days prior to the Effective Date by an appropriate official of the jurisdiction of organization of such Loan Party which shall set forth the same complete name of such Loan Party as is set forth herein and the organizational number of such Loan Party, if an organizational number is issued in such jurisdiction), (B) as to a copy of the resolutions or written consents of such Loan Party authorizing (1) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (2) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith, and (C) the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document (in the case of a Borrower, including Notices of Borrowing, SOFR Notices and all other notices under this Agreement and the other Loan Documents) to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers;

(xii) a certificate of the chief financial officer of the Parent certifying as to the matters set forth in Section 5.01(b), (c), (e) and (f);

(xiii) a certificate of the chief financial officer of each Loan Party, certifying that the Loan Parties (after giving effect to the Loans made on the Effective Date) on a consolidated basis are Solvent;

(xiv) to the extent applicable, a certificate of the appropriate official(s) of the jurisdiction of organization certifying as of a recent date not more than 30 days prior to the Effective Date as to the subsistence in good standing of, and the payment of taxes by, such Loan Party in such jurisdictions;

(xv) an opinion of Paul Hastings LLC, counsel to the Loan Parties, as to such matters as the Collateral Agent may reasonably request;

(xvi) a true, correct and complete copy of each material ABL Facility Document (including all exhibits, appendices, schedules, annexes and attachments thereto and amendments thereof), duly executed by each party thereto;

(xvii) evidence of the insurance coverage required by Section 7.01;

(xviii) evidence of the payment in full of all Indebtedness under the Existing Credit Facility, together with (A) a termination and release agreement with respect to the Existing Credit Facility and all related documents, duly executed by the Loan Parties and the Existing Lenders, (B) a satisfaction of mortgage for each mortgage filed by the Existing Lender on each Facility, (C) a termination of security interest in Intellectual Property for each assignment for security recorded by the Existing Lenders at the United States Patent and Trademark Office or the United States Copyright Office and covering any intellectual property of the Loan Parties, and (D) UCC-3 termination statements for all UCC-1 financing statements filed by the Existing Lenders and covering any portion of the Collateral; and

(xix) such other agreements, instruments, approvals, opinions and other documents, each satisfactory to the Agents in form and substance, as any Agent may reasonably request.

(e) Material Adverse Effect. The Collateral Agent shall have determined, in its sole judgment, that no event or development shall have occurred since December 31, 2023 which could reasonably be expected to have a Material Adverse Effect.

(f) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Loans, or the conduct of the Loan Parties' business, or the consummation of any of the underlying transactions, shall have been obtained and shall be in full force and effect.

(g) [Reserved].

(h) Security Interests. The Loan Documents shall create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first priority security interest in the Collateral secured thereby (subject only to Permitted Liens).

(i) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing pursuant to Section 2.02 hereof.

(j) Know-Your-Customer. The Administrative Agent shall have received, at least two Business Days prior to the Effective Date, a duly executed IRS Form W-9 (or other applicable Tax form) of Parent and the Borrowers, and all documentation and other information with respect to the Loan Parties required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and Beneficial Ownership Regulation, that has been reasonably requested in writing by the Administrative Agent or any Lender at least five Business Days prior to the Effective Date.

Section 5.02. Conditions Precedent to All Loans. The obligation of any Agent or any Lender to make any Loan after the Effective Date is subject to the fulfillment, in a manner satisfactory to the Administrative Agent, of each of the following conditions precedent:

(a) Payment of Fees, Etc. The Borrowers shall have paid all fees, costs, expenses and taxes then payable by the Borrowers pursuant to this Agreement and the other Loan Documents, including, Section 2.06 and Section 12.04 hereof.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct, and the submission by the Administrative Borrower to the Administrative Agent of a Notice of Borrowing with respect to each such Loan, and the Borrowers' acceptance of the proceeds of such Loan, shall each be deemed to be a representation and warranty by each Loan Party on the date of such Loan that: (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the date of such Loan are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date), (ii) at the time of and after giving effect to the making of such Loan and the application of the proceeds thereof, on such date and (iii) the conditions set forth in this Section 5.02 have been satisfied as of the date of such request.

(c) Legality. The making of such Loan shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Notices. The Administrative Agent shall have received a Notice of Borrowing pursuant to Section 2.02 hereof.

(e) Proceedings; Receipt of Documents. All proceedings in connection with the making of such Loan and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be satisfactory to the Agents and their counsel, and the Agents and such counsel shall have received such other agreements, instruments, approvals, opinions and other documents, each in form and substance satisfactory to the Agents, as any Agent may reasonably request.

Section 5.03. Conditions Subsequent to Effectiveness. As an accommodation to the Loan Parties, the Agents and the Lenders have agreed to execute this Agreement and to make the Loans on the Effective Date notwithstanding the failure by the Loan Parties to satisfy the conditions set forth below on or before the Effective Date. In consideration of such accommodation, the Loan Parties agree that, in addition to all other terms, conditions and provisions set forth in this Agreement and the other Loan Documents, including those conditions set forth in Section 5.01, the Loan Parties shall satisfy each of the conditions subsequent set forth below on or before the date applicable thereto (it being understood that (i) the failure by the Loan Parties to perform or cause to be performed any such condition subsequent on or before the date applicable thereto shall constitute an Event of Default and (ii) to the extent that the existence of any such condition subsequent would otherwise cause any representation, warranty or covenant in this Agreement or any other Loan Document to be breached, the Required Lenders hereby waive such breach for the period from the Effective Date until the date on which such condition subsequent is required to be fulfilled pursuant to this Section 5.03):

(a) No later than the date that is 30 days after the Effective Date (as such date may be extended in writing by the Collateral Agent in its sole and absolute discretion), the Borrowers shall deliver (to the extent not delivered on or prior to the Effective Date) certificates of insurance and endorsements to the insurance policies of the Loan Parties as required by Section 7.01(h);

(b) No later than the date that is 60 days after the Effective Date (as such date may be extended in writing by the Collateral Agent in its sole and absolute discretion), the Borrowers shall establish the Asset Sales Proceeds Account and deliver Control Agreements with respect to each deposit account, securities account and commodity account of any Loan Party (other than any Excluded Account);

(c) Not later than the date that is 90 days after the Effective Date (as such date may be extended in writing by the Collateral Agent in its sole and absolute discretion), the Borrower shall deliver to the Collateral Agent a landlord waiver, in form and substance reasonably satisfactory to the Collateral Agent, executed by the landlord with respect to each leased property of the Loan Parties for which a landlord waiver is required to be delivered pursuant to Section 7.01(l) (it being understood that there shall be no breach of this Section 5.03(c) so long as the Loan Parties have employed commercially reasonable efforts to obtain and deliver such agreements); and

(d) Not later than the date that is 90 days after the Effective Date (as such date may be extended in writing by the Collateral Agent in its sole and absolute discretion), each of the Mortgages and other Real Property Deliverables, in form and substance satisfactory to the Collateral Agent, relating to each of the Facilities identified on Schedule 1.01(B) shall have been duly executed by the parties thereto and delivered to the Collateral Agent and shall be in full force and effect, (ii) each of such Facilities shall not be subject to any Lien other than Permitted Liens, and (iii) each of such Mortgages shall have been filed and recorded in the recording office as specified on Schedule 9 of the Perfection Certificate and, in connection therewith, the Collateral Agent shall have received evidence satisfactory to it of each such filing and recordation.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.01. Representations and Warranties. Each Loan Party hereby represents and warrants to the Secured Parties as follows:

(a) Organization, Good Standing, Etc. Holdings and each Loan Party (i) is a corporation, limited liability company or limited partnership duly organized, validly existing and in good standing under the laws of the state or jurisdiction of its organization, (ii) has all requisite power and authority to own its property and assets and conduct its business as now conducted and as presently contemplated and, in the case of the Borrowers, to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except (solely for the purposes of this subclause (iii)) where the failure to be so qualified and in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization, Etc. The execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene (A) any of its Governing Documents, (B) any applicable Requirement of Law or (C) any Contractual Obligation binding on or otherwise affecting it or any of its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document) upon or with respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties, except, solely for the purposes of subclauses (ii)(B), (ii)(C) and (iv), to the extent such contravention, default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal could not reasonably be expected to have a Material Adverse Effect.

(c) Governmental Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of any Loan Document to which it is or will be a party other than filings and recordings with respect to Collateral to be made, or otherwise delivered to the Collateral Agent for filing or recordation, on the Effective Date.

(d) Enforceability of Loan Documents. This Agreement is, and each other Loan Document to which any Loan Party is or will be a party, when delivered hereunder, will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) Capitalization. On the Effective Date, after giving effect to the transactions contemplated hereby to occur on the Effective Date, the authorized Equity Interests of the Parent and each of its Subsidiaries and the issued and outstanding Equity Interests of the Parent and each of its Subsidiaries are as set forth on Schedule 6.01(e). All of the issued and outstanding shares of Equity Interests of the Parent and each of its Subsidiaries have been validly issued and are fully paid and nonassessable, and, except as set forth on Schedule 6.01(e), the holders thereof are not entitled to any preemptive, first refusal or other similar rights. All Equity Interests of such Subsidiaries of the Parent are owned by the Parent free and clear of all Liens (other than Permitted Specified Liens). Except as described on Schedule 6.01(e), there are no outstanding debt or equity securities of the Parent or any of its Subsidiaries and no outstanding obligations of the Parent or any of its Subsidiaries convertible into or exchangeable for, or warrants, options or other rights for the purchase or acquisition from the Parent or any of its Subsidiaries, or other obligations of the Parent or any of its Subsidiaries to issue, directly or indirectly, any shares of Equity Interests of the Parent or any of its Subsidiaries.

(f) Litigation. Except as set forth in Schedule 6.01(f), there is no pending or, to the best knowledge of any Loan Party, threatened (in writing) action, suit or proceeding affecting Holdings, any Loan Party, any Subsidiary or any of its properties before any court or other Governmental Authority or any arbitrator that (i) could reasonably be expected to have a Material Adverse Effect or (ii) relates to this Agreement or any other Loan Document or any transaction contemplated hereby or thereby.

(g) Financial Statements.

(i) The Financial Statements, copies of which have been delivered to each Agent and each Lender, fairly present in all material respects the consolidated financial condition of Holdings and its Subsidiaries as at the respective dates thereof and the consolidated results of operations of Holdings and its Subsidiaries for the fiscal periods ended on such respective dates, all in accordance with GAAP. All material indebtedness and other liabilities (including Indebtedness, liabilities for taxes, long-term leases and other unusual forward or long-term commitments), direct or contingent, of Holdings and its Subsidiaries are set forth in the Financial Statements. Since December 31, 2023, no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(ii) The Parent has heretofore furnished to each Agent and each Lender (A) projected quarterly balance sheets, income statements and statements of cash flows of Holdings and its Subsidiaries for the period from December 31, 2024 through December 31, 2025, and (B) projected annual balance sheets, income statements and statements of cash flows of Holdings and its Subsidiaries for the Fiscal Years ending in 2024 through 2029, which projected financial statements shall be updated from time to time pursuant to Section 7.01(a)(vii).

(iii) As of the Effective Date, the Total Net Leverage Ratio of the Parent and its Subsidiaries as of the last day of the four fiscal quarter period ended on September 30, 2024, determined on a Pro Forma Basis after giving effect to the incurrence of the Initial Term Loan and the other Transactions to occur on the Effective Date, does not exceed 1.75:1.00.

(h) Compliance with Law, Etc. None of Holdings, any Loan Party or any of the Subsidiaries is in violation of (i) any of its Governing Documents, (ii) any Requirement of Law, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, or (iii) any term of any Contractual Obligation (including any Material Contract) binding on or otherwise affecting it or any of its properties, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, and no default or event of default has occurred and is continuing thereunder.

(i) ERISA. Except as set forth on Schedule 6.01(i), (i) each Employee Plan is in compliance with all Requirements of Law in all material respects, and each Loan Party, each Subsidiary and each Employee Plan is in compliance with ERISA, the Internal Revenue Code and the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 in all material respects, (ii) no ERISA Event has occurred nor is reasonably expected to occur with respect to any Employee Plan or Multiemployer Plan, (iii) the most recent annual report (Form 5500 Series) with respect to each Pension Plan, including any required Schedule B (Actuarial Information) thereto, copies of which have been filed with the Internal Revenue Service and delivered to the Agents, is complete and correct and fairly presents the funding status of such Pension Plan, and since the date of such report, there has been no material adverse change in such funding status, (iv) copies of each agreement entered into with the PBGC, the U.S. Department of Labor or the Internal Revenue Service with respect to any Employee Plan have been delivered to the Agents, and (v) each Employee Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has been determined by the Internal Revenue Service to be qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto is exempt from federal income tax under Section 501(a) of the Internal Revenue Code. No Loan Party or any of its ERISA Affiliates has incurred any liability to the PBGC which remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid. There are no pending or, to the best knowledge of any Loan Party, threatened claims, actions, proceedings or lawsuits (other than claims for benefits in the normal course) asserted or instituted against (A) any Employee Plan or its assets, (B) any fiduciary with respect to any Employee Plan, or (C) any Loan Party or any of its ERISA Affiliates with respect to any Employee Plan. Except as required by Section 4980B of the Internal Revenue Code, no Loan Party or any of its ERISA Affiliates maintains an employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides health benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or any of its ERISA Affiliates or has any obligation to provide any such benefits for any current employee after such employee's termination of employment.

(j) Taxes, Etc. (i) All federal and other material Tax returns and other material reports required by applicable Requirements of Law to be filed by Holdings, any Loan Party or any Subsidiary have been timely filed and (ii) all Taxes imposed upon Holdings, any Loan Party, any Subsidiary or any property of Holdings, any Loan Party or any Subsidiary which have become due and payable on or prior to the date hereof have been paid, except (A) unpaid Taxes in an aggregate amount at any one time not in excess of \$500,000, and (B) Taxes contested in good faith by proper proceedings which stay the imposition of any Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof on the Financial Statements in accordance with GAAP.

(k) Regulations T, U and X. No Loan Party or any Subsidiary is or will be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U and X.

(l) Nature of Business.

(i) No Loan Party or any of its Subsidiaries is engaged in any business other than as set forth on Schedule 6.01(l) or any business reasonably related, incidental or ancillary thereto.

(ii) Neither Holdings nor the Parent has any material liabilities (other than liabilities arising under the Loan Documents, the ABL Facility Documents and the Tax Receivable Agreement and, in the case of the Parent, arising in respect of Permitted Indebtedness), owns any material assets (other than the Equity Interests of its Subsidiaries) or is engaged in any operations or business (other than relating to the ownership of its Subsidiaries).

(m) Adverse Agreements, Etc. None of Holdings, any Loan Party or any of the Subsidiaries is a party to any Contractual Obligation or subject to any restriction or limitation in any Governing Document or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority, which (either individually or in the aggregate) has, or in the future could reasonably be expected (either individually or in the aggregate) to have, a Material Adverse Effect.

(n) Permits, Etc. Each Loan Party and each Subsidiary has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations, including Environmental Permits, required for such Person lawfully to own, lease, manage or operate, or to acquire, each business and Facility currently owned, leased, managed or operated, or to be acquired, by such Person, except to the extent the failure to have or be in compliance therewith could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, including any such Environmental Permit, and there is no claim that any of the foregoing is not in full force and effect.

(o) Properties. (i) Each Loan Party and each Subsidiary has good and marketable title to, valid leasehold interests in, or valid licenses to use, all property and assets material to its business, free and clear of all Liens, except Permitted Liens. All such properties and assets are in good working order and condition, ordinary wear and tear excepted and (ii) as of the Effective Date, Schedule 1.01(B) sets forth the address of each real estate asset (or each set of such assets that collectively comprise one operating property) that is owned in fee simple by any Loan Party.

(p) Employee and Labor Matters. Except as set forth on Schedule 6.01(p), (i) Holdings, each Loan Party and each Subsidiary is in compliance with all Requirements of Law in all material respects pertaining to employment and employment practices, terms and conditions of employment, wages and hours, and occupational safety and health, (ii) none of Holdings, any Loan Party or any Subsidiary is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of the employees of Holdings, any Loan Party or any Subsidiary, (iii) there is no unfair labor practice complaint pending or, to the best knowledge of any Loan Party, threatened against Holdings, any Loan Party or any Subsidiary before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against Holdings, any Loan Party or any Subsidiary which arises out of or under any collective bargaining agreement, (iv) there has been no strike, work stoppage, slowdown, lockout, or other labor dispute pending or threatened against Holdings, any Loan Party or any Subsidiary, and (v) to the best knowledge of each Loan Party, no labor organization or group of employees has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed, with the National Labor Relations Board or any other labor relations tribunal or authority. None of Holdings, any Loan Party or any Subsidiary has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act (“WARN”) or any similar Requirement of Law, which remains unpaid or unsatisfied. All payments due from Holdings, any Loan Party or any Subsidiary on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Holdings, such Loan Party or such Subsidiary, as applicable, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Environmental Matters. Except as set forth on Schedule 6.01(q) hereto, (i) no Loan Party or any of its Subsidiaries is in violation of any Environmental Law, (ii) each Loan Party and each of its Subsidiaries has, and is in compliance with, all Environmental Permits for its respective operations and businesses, except to the extent any failure to have or be in compliance therewith, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; (iii) there has been no Release or threatened Release of Hazardous Materials on, in, at, under or from any properties currently or formerly owned, leased or operated by any Loan Party, its Subsidiaries or a respective predecessor in interest or at any disposal or treatment facility which received Hazardous Materials generated by any Loan Party, its Subsidiaries or any respective predecessor in interest, which in any case of the foregoing, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; (iv) there are no pending or threatened Environmental Claims against, or Environmental Liability of, any Loan Party, its Subsidiaries or any respective predecessor in interest that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; (v) neither any Loan Party nor any of its Subsidiaries is performing or responsible for any Remedial Action that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; and (vi) the Loan Parties have made available to the Collateral Agent and Lenders true and complete copies of all material environmental reports, audits and investigations in the possession or control of any Loan Party or any of its Subsidiaries with respect to the operations and business of the Loan Parties and its Subsidiaries.

(r) Insurance. Each Loan Party and its Subsidiaries maintains all insurance required by Section 7.01(h). Schedule 6.01(r) sets forth a list of all such insurance maintained by or for the benefit of each Loan Party and its Subsidiaries on the Effective Date.

(s) Use of Proceeds. The proceeds of the Initial Term Loans shall be used (a) to refinance the Existing Credit Facility, (b) to pay fees and expenses in connection with the transactions contemplated hereby, and (c) for general corporate purposes. The proceeds of the Incremental Term Loans shall be used (subject to Section 2.11(b)(vi)) for the purposes specified in the applicable Incremental Term Loan Assumption Agreement.

(t) Solvency. After giving effect to the transactions contemplated by this Agreement and before and after giving effect to each Loan, each Loan Party is, and the Loan Parties on a consolidated basis are, Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

(u) Intellectual Property. Except as set forth on Schedule 6.01(u), each Loan Party and each Subsidiary owns or licenses or otherwise has the right to use all Intellectual Property rights that are necessary for the operation of its business, without material infringement upon or conflict with the rights of any other Person with respect thereto. Set forth on Schedule 6.01(u) is a complete and accurate list as of the Effective Date of (i) each item of Registered Intellectual Property owned by each Loan Party and each Subsidiary; and (ii) each material Intellectual Property Contract to which any Loan Party or any Subsidiary is bound. To the knowledge of the Loan Parties, no trademark or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Subsidiary materially infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened in writing which, individually or the in aggregate, could reasonably be expected to have a Material Adverse Effect. To the knowledge of each Loan Party, no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code pertaining to Intellectual Property is pending or threatened in writing, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(v) Material Contracts. Set forth on Schedule 6.01(v) is a complete and accurate list as of the Effective Date of all Material Contracts of each Loan Party and each Subsidiary, showing the parties and subject matter thereof and amendments and modifications thereto. As of the Effective Date, each such Material Contract is in full force and effect and is binding upon and enforceable against each Loan Party and each Subsidiary that is a party thereto and, to the best knowledge of such Loan Party, all other parties thereto in accordance with its terms and (ii) is not in default due to the action of any Loan Party or any Subsidiary or, to the best knowledge of any Loan Party, any other party thereto.

(w) Investment Company Act. None of the Loan Parties is (i) an “investment company” or an “affiliated person” or “promoter” of, or “principal underwriter” of or for, an “investment company”, as such terms are defined in the Investment Company Act of 1940, as amended, or (ii) subject to regulation under any Requirement of Law that limits in any respect its ability to incur Indebtedness or which may otherwise render all or a portion of the Obligations unenforceable.

(x) Customers and Suppliers. There exists no actual or threatened (in writing) termination or cancellation of the business relationship between (i) any Loan Party or any Subsidiary, on the one hand, and any customer or any group thereof, on the other hand, or (ii) any Loan Party or any Subsidiary, on the one hand, and any supplier or any group thereof, on the other hand, in each case, which could be expected to result in a in a Material Adverse Effect, and there exists no present state of facts or circumstances that could reasonably be expected to give rise to or result in any such termination or cancellation.

(y) Sanctions; Anti-Corruption Laws and Anti-Money Laundering Laws

(i) None of Holdings, any Loan Party or any Subsidiary thereof, nor, to the knowledge of any Loan Party, any of their respective directors, officers, employees, agents or Affiliates, (A) is a Sanctioned Person, (B) has assets located in a Sanctioned Country, (C) conducts any business with or for the benefit of any Sanctioned Person, (D) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, (E) is a "Foreign Shell Bank" within the meaning of the USA PATRIOT Act, or (F) is a Person that resides in or is organized under the laws of a jurisdiction designated by the United States Secretary of the Treasury under Section 311 of the USA PATRIOT Act as warranting special measures due to money laundering concerns. Holdings, each Loan Party and the Subsidiaries have implemented and maintain in effect policies and procedures designed to ensure compliance by Holdings, each Loan Party and the Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws, and Sanctions. Holdings, each Loan Party and each Subsidiary has complied and is in compliance with all applicable Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws.

(ii) None of Holdings, any Loan Party, any Subsidiary thereof or, any director, officer, employee, nor, to the best knowledge of any Loan Party, any other Person acting on behalf of Holdings, any Loan Party or any Subsidiary thereof, has offered, promised, paid, given or authorized the payment or giving of any money or other thing of value, directly or indirectly, to or for the benefit of any Person, including without limitation, any employee, official, representative or other Person acting on behalf of any Governmental Authority, or otherwise engaged in any activity that may violate any Anti-Corruption Law.

(iii) There is no pending or, to the best knowledge of any Loan Party, threatened action, suit, proceeding or investigation before any court or other Governmental Authority against Holdings, any Loan Party, any Subsidiary thereof or any of their respective directors, officers, employees or other Person acting on behalf of Holdings, any Loan Party or any Subsidiary thereof that relates to a potential violation of any Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

(iv) The Loan Parties will not directly or indirectly use, lend or contribute the proceeds of the Loans for any purpose that would breach the Anti-Money Laundering Laws or Anti-Corruption Laws.

(z) No Recordation. It is not necessary that any Loan Document or any other document be filed, registered or recorded with, or executed or notarized before, any court, public office or other authority in the State of New York or that any registration charge or stamp or similar tax be paid on or in respect of any Loan Document or any other document in order to ensure the legality, validity, effectiveness, enforceability, priority or admissibility in evidence of such Loan Document, in each case other than any Mortgage and other than filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Collateral Agent for filing or recordation on the Effective Date.

(aa) Collateral Documents. The Collateral Documents are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties legal, valid and enforceable Liens on and security interests in, the Collateral described therein and to the extent intended to be created thereby, except as such enforceability may be limited by general principles of equity and any limitations set forth herein, and (i) when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable laws (which filings or recordings shall be made to the extent required by any Collateral Document) together with the payment of all requisite fees (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent required by any Collateral Document) and (iii) taking all the actions required hereby, the Liens created by such Collateral Documents will constitute under relevant law perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in such Collateral, in each case subject to Permitted Liens.

(bb) Pari Passu. Subject to the Intercreditor Agreement, the obligations of each Loan Party under this Agreement and the other Loan Documents to which it is a party rank and will rank at least *pari passu* in priority of payment and in all other respects with all its other present and future unsecured and unsubordinated Indebtedness of such Loan Party.

(cc) Technology Security Systems.

(i) Each Loan Party and each of its Subsidiaries has implemented and maintains commercially reasonable administrative, physical, and technical security measures and procedures, as applicable, intended to protect the confidentiality, integrity, and security of (A) its computers, computer systems, servers, hardware, software, websites, databases, networks, and all other information technology equipment and systems owned, operated, or controlled by such Loan Party or Subsidiary, including any hosted locations and other outsourced systems and processes (all of the foregoing in this clause (A), "Loan Party Systems") and (B) Personal Information accessed, collected, used, processed, stored, transferred or disclosed by or on behalf of any Loan Party or any Subsidiary of any Loan Party (all such data and information referred to in this clause (B), "Loan Party Data"), including from theft, destruction, corruption, loss or unauthorized use, access, interruption, deletion, alteration or modification by any Person. All Loan Party Systems are operational and have adequate backups and disaster recovery arrangements that are at least commercially reasonable and consistent with applicable industry standards. Without limiting the generality of the foregoing, each Loan Party and each of its Subsidiaries (x) maintains physical security measures intended to protect applicable equipment and software, (y) utilizes commercially reasonable virus and intrusion checking software and firewalls, and (z) where reasonably necessary, limits access to Loan Party Data to only those employees and agents who need such access for the conduct of the business of the Loan Parties and their Subsidiaries.

(ii) No Loan Party or any Subsidiary of any Loan Party, at any time within the last three years, has experienced any (A) material security incidents, data breaches, intrusions or unauthorized access, use or compromise of any of the Loan Party Systems, (B) material unauthorized collection, access, use, processing, loss, compromise, interruption, deletion, modification or disclosure of any Loan Party Data or trade secrets of any Loan Party or any Subsidiary of any Loan Party or (C) material cyber, social engineering, spoofing, phishing, ransom, viral or other attack, theft or intrusion that that has allowed an unauthorized Person to access, copy, encrypt or otherwise use any Loan Party Data (all of the foregoing clauses (A), (B) and (C), "Security Breaches"). Each Loan Party and each of its Subsidiaries is in compliance with all Requirements of Laws regarding the privacy or security of all Loan Party Data except for any failure to be in compliance that would not reasonably be executed to result in a Material Adverse Effect. No Loan Party or any Subsidiary of any Loan Party has received or is aware of any written notice, allegation, complaint or other written communication, and to the knowledge of the Loan Parties there is no pending investigation by any Governmental Authority or other Person regarding any actual or possible violation of any Requirements of Laws regarding the privacy or security of any Loan Party Data that would reasonably be executed to result in a Material Adverse Effect.

(dd) Full Disclosure.

(i) Each Loan Party and each Subsidiary has disclosed to the Agents all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party or any Subsidiary to the Agents (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) in connection with the negotiation of this Agreement or delivered hereunder contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which it was made, not materially misleading.

(ii) Projections have been prepared on a reasonable basis and in good faith based on assumptions, estimates, methods and tests that are believed by the Loan Parties to be reasonable at the time such Projections were prepared and information believed by the Loan Parties to have been accurate based upon the information available to the Loan Parties and the Subsidiaries at the time such Projections were furnished to the Lenders; it being understood that (A) Projections are by their nature subject to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, (B) actual results may differ materially from the Projections and such variations may be material and (C) the Projections are not a guarantee of performance.

(ee) Management Agreements. As of the Effective Date, the Loan Parties are not party to any management, consulting, monitoring or advisory agreements with any Affiliate of any Loan Party other than compensation and indemnification agreements entered into with employees, independent contractors, officers and directors or other agreements that are permitted under Section 7.02(i).

ARTICLE VII

COVENANTS OF THE LOAN PARTIES AND OTHER COLLATERAL MATTERS

Section 7.01. Affirmative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall, and shall cause each of the Subsidiaries to, unless the Required Lenders shall otherwise consent in writing:

(a) Reporting Requirements. Furnish to each Agent and each Lender:

(i) as soon as available, and in any event within 30 days after the end of each fiscal month of the Parent and its Subsidiaries (commencing with the fiscal month ending January 31, 2025), (x) the internally prepared consolidated balance sheet, income statement and statement of cash flows of the Parent and its consolidated Subsidiaries as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements of the Parent and its consolidated Subsidiaries for the immediately preceding Fiscal Year, and (B) commencing with the fiscal month ending March 30, 2025, the budget relating to such Fiscal Year, all in reasonable detail and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as at the end of such fiscal month and the results of operations of the Parent and its Subsidiaries for such fiscal month and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments and (y) a report of key performance indicators consisting of “Revenue by Sales Channel” for such fiscal month and, at the reasonable request of the Administrative Agent, any other metrics that Holdings or the Loan Parties prepare in the ordinary course of business or can reasonably provide without undue burden or expense; provided, however, that no such reports shall be required to be prepared in accordance with GAAP;

(ii) as soon as available and in any event within 45 days after the end of each fiscal quarter of the Parent and its Subsidiaries (commencing with the fiscal quarter ending March 31, 2025), the consolidated balance sheet, income statement and statement of cash flows of the Parent and its Subsidiaries as at the end of such quarter, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year and (B) the budget relating to such Fiscal Year, all in reasonable detail and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as of the end of such quarter and the results of operations of the Parent and its Subsidiaries for such quarter and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of the Parent and its Subsidiaries furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(iii) as soon as available, and in any event within 90 days after the end of each Fiscal Year of the Parent and its Subsidiaries (commencing with the fiscal year ending December 31, 2024), the consolidated balance sheet, income statement and statement of cash flows of the Parent and its Subsidiaries as at the end of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year, and (B) commencing with the Fiscal Year ending December 31, 2025, the budget relating to such Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and an unqualified audit opinion of independent certified public accountants of nationally recognized standing selected by the audit committee of the Parent (which report and opinion shall not include any qualification, exception or explanatory paragraph expressing substantial doubt about the ability of the Parent or any of its Subsidiaries to continue as a going concern or any qualification or exception as to the scope of such audit (other than a “going concern” or like qualification that is due solely to (i) the impending maturity of the Obligations under this Agreement, (ii) any anticipated inability to satisfy any financial covenant set forth in Section 7.03 of this Agreement, or (iii) changes in accounting principles or practices reflecting changes in GAAP that are required or approved by the Borrowers’ independent certified public accountants) that the financial statements were prepared in accordance with GAAP and present fairly, in accordance with GAAP, in all material respects the results of operations and financial position of the Parent and its Subsidiaries as of the end of and for the Fiscal Year then ended;

(iv) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (i)(x), (ii) and (iii) of this Section 7.01(a), a Compliance Certificate:

(A) (x) stating that such Authorized Officer has reviewed the provisions of this Agreement and the other Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of the Parent and its Subsidiaries during the period covered by such financial statements with a view to determining whether the Parent and its Subsidiaries were in compliance with all of the provisions of this Agreement and such Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and such Authorized Officer has no knowledge of, the occurrence and continuance during such period of an Event of Default or Default or, if an Event of Default or Default had occurred and continued or is continuing, describing the nature and period of existence thereof and the action which the Parent and its Subsidiaries propose to take or have taken with respect thereto, (y) identifying each Subsidiary of the Parent as a Loan Party or an Excluded Subsidiary or confirming that there is no change in such information since the later of the Effective Date and the date of the last such list, and (z) to the extent required such that the conditions in the definition of Immaterial Subsidiary continue to be satisfied, designating one or more Subsidiaries as no longer constituting an Immaterial Subsidiary for purposes of this Agreement;

(B) in the case of the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (ii) and (iii) of this Section 7.01(a), attaching a schedule showing the calculation of the financial covenants specified in Section 7.03, and

(C) in the case of the delivery of the financial statements of the Parent and its Subsidiaries required by clause (iii) of this Section 7.01(a), attaching, commencing with the Fiscal Year ending December 31, 2025, (1) a summary of all material insurance coverage maintained as of the date thereof by any Loan Party or any of its Subsidiaries, (2) the calculation of the Excess Cash Flow in accordance with the terms of Section 2.05(c)(i) and (3) confirmation that there have been no changes to the information contained in each of the Perfection Certificates delivered on the Effective Date or the date of the most recently updated Perfection Certificate delivered pursuant to this clause (iv), or attaching an updated Perfection Certificate identifying any such changes to the information contained therein;

(v) as soon as available and in any event not later than 45 days after the beginning of each Fiscal Year, a certificate of an Authorized Officer of the Parent (A) attaching a detailed consolidated budget and Projections (including estimates of free cash flow) for the Parent and its Subsidiaries for such Fiscal Year (supplementing and superseding the Projections previously required to be delivered pursuant to this Agreement) for such Fiscal Year, in each case, prepared on a monthly basis, and (B) certifying that the representations and warranties set forth in Section 6.01(dd)(ii) are true and correct with respect to the Projections;

(vi) as soon as available and in any event not later than 45 days after the end of the fiscal months ended November 30, 2024 and December 31, 2024, the internally prepared consolidated balance sheet, income statement and statements of cash flows of the Parent and its consolidated Subsidiaries as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month;

(vii) promptly after submission to any Governmental Authority, all documents and information furnished to such Governmental Authority in connection with any investigation of any Loan Party or any Subsidiary other than routine inquiries by such Governmental Authority;

(viii) within three Business Days after (A) the occurrence of an Event of Default or Default or (B) the occurrence of any event or development that would reasonably be expected to have a Material Adverse Effect, the written statement of an Authorized Officer of the Administrative Borrower setting forth the details of such Event of Default or Default or other event or development having a Material Adverse Effect and the action which the affected Loan Party proposes to take with respect thereto;

(ix) promptly after obtaining knowledge of the occurrence thereof, the occurrence of any ERISA Event that, either individually or together with any other ERISA Events, could reasonably be expected to have a Material Adverse Effect;

(x) promptly after the commencement thereof but in any event not later than five Business Days after service of process with respect thereto on, or the obtaining of knowledge thereof by, any Loan Party, notice of any investigation, action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(xi) as soon as possible and in any event within five Business Days after execution, receipt or delivery thereof, copies of (A) any material notices that any Loan Party executes or receives in connection with (x) any Material Contract, (y) the sale or other Disposition of the Equity Interests of, or all or substantially all of the assets of, any Loan Party or any Subsidiary or (z) the ABL Facility and (B) each material ABL Facility Document and each amendment to or modification of a material ABL Facility Document (together with all documents and materials delivered in connection therewith);

(xii) promptly after (A) the sending or filing thereof, copies of all material statements, reports and other information that Holdings, any Loan Party or any Subsidiary sends to any holders of its material Indebtedness or its securities and (B) the receipt thereof, a copy of any material notice received from any holder of its material Indebtedness;

(xiii) promptly upon receipt thereof, copies of all financial reports (including, management letters), if any, submitted to Holdings, any Loan Party or any Subsidiary by its auditors in connection with any annual or interim audit of the books thereof;

(xiv) promptly upon request, any certification or other evidence requested from time to time by any Lender in its sole discretion, confirming the Borrowers' compliance with [Section 7.02\(n\)](#);

(xv) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (i), (ii) and (iii) of this Section 7.01(a), if, as a result of any change in accounting principles and policies from those used in the preparation of the Financial Statements (other than as may be required to conform to GAAP), the consolidated financial statements of the Parent and its Subsidiaries delivered pursuant to clauses (i), (ii) and (iii) of this Section 7.01(a) will differ from the consolidated financial statements that would have been delivered pursuant to such clauses had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to the Agents; provided that no statement of reconciliation shall be required to be delivered to the extent that such change in accounting principles or policies are disclosed to the Agents in writing;

(xvi) promptly after submission to the ABL Agent or any ABL Lender, copies of any notices, reports and other materials or information delivered to the ABL Agent or ABL Lenders pursuant to the ABL Facility Documents, including all Borrowing Base Certificates; and

(xvii) promptly upon request, such other information concerning the financial condition or operations of any Loan Party (including any Environmental, Social, and Corporate Governance information) as any Agent may from time to time may reasonably request.

Notwithstanding anything set forth in this Agreement, the obligations referred to in this Section 7.01(a) may be satisfied with respect to information of Holdings, any Loan Party or any Subsidiary, to the extent that the reports or information are included in materials publicly filed by Holdings with the SEC, by the public filing of such information or reports with the SEC, including, with respect to financial information of Holdings, any Loan Party or any Subsidiary required pursuant to Section 7.01(a), by the public filing of Form 8-K, 10-K or 10-Q of Holdings filed with the SEC or any other information, report or document that is published on SEC.gov by Holdings that contains the information otherwise required to be delivered pursuant to such Section.

(b) Additional Guarantors and Collateral Security. Cause:

(i) each Subsidiary (other than an Excluded Subsidiary) of any Loan Party not in existence on the Effective Date, or that ceases to be an Excluded Subsidiary, to execute and deliver to the Collateral Agent promptly and in any event within 30 days (or such longer period agreed to by the Collateral Agent in its reasonable discretion) after the formation, acquisition or change in status thereof, (A) a Joinder Agreement, pursuant to which such Subsidiary shall be made a party to this Agreement as a Guarantor, (B) a supplement to the Security Agreement, together with (1) certificates evidencing all of the Equity Interests of any Person owned by such Subsidiary required to be pledged under the terms of the Security Agreement, (2) undated stock powers for such Equity Interests executed in blank with signature guaranteed, and (3) such opinions of counsel as the Collateral Agent may reasonably request, (C) to the extent required under the terms of this Agreement, one or more Mortgages creating on the Eligible Real Property of such Subsidiary a perfected, first priority Lien (in terms of priority, subject only to Permitted Specified Liens) on such Eligible Real Property and such other Real Property Deliverables as may be required by the Collateral Agent with respect to each such real property, (D) if the respective Subsidiary owns registrations of or applications for any Intellectual Property registered or to be registered in the United States that constitutes Collateral, an Intellectual Property Security Agreement, (E) such other agreements, instruments, approvals or other documents reasonably requested by the Collateral Agent in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by any such Security Agreement, Collateral Document or Mortgage or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and the Collateral Documents and that all property and assets of such Subsidiary shall become Collateral for the Obligations; and

(ii) each Loan Party that is the owner of the Equity Interests of any Subsidiary (including any Excluded Subsidiary) to execute and deliver promptly and in any event within 30 days after the formation or acquisition of such Subsidiary (A) all certificates (if any) evidencing all of the Equity Interests of such Subsidiary, (B) undated stock powers or other appropriate instruments of assignment for such Equity Interests executed in blank with signature guaranteed, (C) such opinions of counsel as the Collateral Agent may reasonably request and (D) such other agreements, instruments, approvals or other documents as the Collateral Agent may reasonably request.

(c) Compliance with Laws; Payment of Taxes

(i) Comply, and cause Holdings and each of its Subsidiaries to comply, with all Requirements of Law, judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing), except to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(ii) File all federal and other material Tax returns required to be filed by Holdings and its Subsidiaries, and pay, and cause Holdings and each of its Subsidiaries to pay, in full before delinquency or before the expiration of any extension period, all federal, state and other material Taxes imposed upon any Loan Party or any of its Subsidiaries or any property of any Loan Party or any of its Subsidiaries, except (i) unpaid Taxes in an aggregate amount at any one time not in excess of \$500,000, and (ii) Taxes contested in good faith by proper proceedings which stay the imposition of any Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) Preservation of Existence, Etc. Maintain and preserve, and cause Holdings and each of its Subsidiaries to maintain and preserve, its existence, rights and privileges (except as otherwise expressly permitted hereunder), and become or remain, and cause Holdings and each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except to the extent that the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

(e) Keeping of Records and Books of Account. Keep, and cause Holdings and each of its Subsidiaries to keep, adequate records and books of account, with complete entries made to permit the preparation of financial statements in accordance with GAAP.

(f) Inspection Rights. Permit, and cause each of its Subsidiaries to permit, the agents, advisors and representatives of any Agent at any time and from time to time during normal business hours, at the expense of the Borrowers, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives. In furtherance of the foregoing, each Loan Party hereby authorizes its independent accountants, and the independent accountants of each of its Subsidiaries, to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the agents and representatives of any Agent in accordance with this Section 7.01(f); provided that so long as no Event of Default exists, the Agents shall not exercise such rights at the Borrowers' expense more often than one time in any fiscal year (excluding any such visits during the continuance of an Event of Default); provided, further, that when an Event of Default exists, the Agents (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice. Notwithstanding the foregoing, no Loan Party or their respective Subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure to Administrative Agent, any agent thereof or any Lender is prohibited by applicable law, (ii) except to the extent reasonably necessary in order to realize upon any of the Collateral as part of an exercise of remedies under this Agreement or the other Loan Documents, information constituting material trade secrets to the extent not materially relevant to the credit analysis of the Loan Parties and their respective Subsidiaries and to the extent the disclosure of such trade secrets would be materially harmful to the business of any Loan Party or any of its Subsidiaries, or (iii) that is subject to attorney-client privilege which cannot be reasonably waived by a Loan Party.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear and casualty excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except to the extent the failure to so maintain and preserve or so comply could not reasonably be expected to have a Material Adverse Effect.

(h) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including comprehensive general liability, hazard, flood, rent, worker's compensation and business interruption insurance) with respect to the Collateral and its other properties (including all real property leased or owned by it) and business, in such amounts and covering such risks as is (i) carried generally in accordance with sound business practice by companies in similar businesses similarly situated, (ii) required by any Requirement of Law, (iii) required by any Material Contract and (iv) in any event in amount, adequacy and scope reasonably satisfactory to the Collateral Agent. All policies covering the Collateral are to be made payable to the Collateral Agent for the benefit of the Agents and the Lenders, as their interests may appear, in case of loss, under a standard non contributory "lender" or "secured party" clause and are to contain such other provisions as the Collateral Agent may require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of insurance are to be delivered to the Collateral Agent and the policies are to be premium prepaid, with the loss payable and additional insured endorsement in favor of the Collateral Agent for the benefit of the Agents and the Lenders, as their respective interests may appear, and such other Persons as the Collateral Agent may designate from time to time, and shall provide for not less than 30 days' (10 days' in the case of non-payment) prior written notice to the Collateral Agent of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Collateral Agent may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Collateral Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(i) Obtaining of Permits, Etc. Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations that are necessary or useful in the proper conduct of its business, in each case, except to the extent the failure to obtain, maintain, preserve or take such action could not reasonably be expected to have a Material Adverse Effect.

(j) Environmental.

(i) Keep the Collateral free of any Environmental Lien;

(ii) Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all Environmental Permits that are necessary or useful in the proper conduct of its business, and comply, and cause each of its Subsidiaries to comply, with all Environmental Laws and Environmental Permits, except to the extent the failure to so obtain, maintain, preserve or comply could not reasonably be expected to result in a material Environmental Claim or Environmental Liability;

(iii) Take all commercially reasonable steps to prevent any Release or threatened Release of Hazardous Materials in violation of any Environmental Law or Environmental Permit at, in, on, under or from any property owned, leased or operated by any Loan Party or its Subsidiaries that could reasonably be expected to result in material Environmental Liabilities;

(iv) Provide the Collateral Agent with written notice within 10 days of obtaining knowledge of any of the following: (A) discovery of any Release of a Hazardous Material or environmental condition at, in, on, under or from any property currently or formerly owned, leased or operated by any Loan Party, Subsidiary or predecessor in interest or any material violation of Environmental Law or Environmental Permit that in any case could reasonably be expected to result in any material Environmental Claim or Environmental Liability; (B) notice that an Environmental Lien has been filed against any Collateral; or (C) any material Environmental Claim or Environmental Liability; and provide such reports, documents and information as the Collateral Agent may reasonably request from time to time with respect to any of the foregoing.

(k) Fiscal Year. Cause the Fiscal Year of the Parent and its Subsidiaries to end on December 31 of each calendar year unless the Agents consent to a change in such Fiscal Year (and appropriate related changes to this Agreement).

(l) Landlord Waivers; Collateral Access Agreements. At any time any Collateral with a book value in excess of \$1,000,000 (when aggregated with all other Collateral at the same location) is located on any real property of a Loan Party (whether such real property is now existing or acquired after the Effective Date) which is not owned by a Loan Party, or is stored on the premises of a bailee, warehouseman, or similar party, notify the Collateral Agent and, at the reasonable request of the Collateral Agent, use commercially reasonable efforts to obtain written subordinations or waivers or collateral access agreements, as the case may be, in form and substance satisfactory to the Collateral Agent.

(m) After Acquired Real Property. Upon the acquisition by any Borrower or any of the Subsidiaries after the date hereof of any fee interest in any Eligible Real Property (wherever located) (each such interest being a "New Facility"), immediately so notify the Collateral Agent, setting forth with specificity a description of the interest acquired, the location of the real property, any structures or improvements thereon and either an appraisal or such Loan Party's good-faith estimate of the current value of such real property. The Collateral Agent shall notify such Loan Party whether it intends to require a Mortgage (and any other Real Property Deliverables) with respect to such New Facility. Upon receipt of such notice requesting a Mortgage (and any other Real Property Deliverables), the Person that has acquired such New Facility shall promptly furnish the same to the Collateral Agent. The Borrowers shall pay all fees and expenses, including reasonable attorneys' fees and expenses, and all title insurance charges and premiums, in connection with each Loan Party's obligations under this Section 7.01(m).

(n) Anti-Corruption Laws; Anti-Money Laundering Laws; Sanctions.

(i) Maintain, and cause each of its Subsidiaries to maintain, policies and procedures designed to promote compliance by each Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(ii) Comply, and cause each of its Subsidiaries to comply, with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(iii) None of any Loan Party, any Subsidiary thereof, or, to the best knowledge of any Loan Party, any director, officer, employee or other Person acting on behalf of any Loan Party or any Subsidiary thereof will engage in any activity that would breach any Anti-Corruption Law.

(iv) Promptly notify the Administrative Agent of any action, suit or investigations by any court or Governmental Authority in relation to an alleged breach of any Anti-Corruption Law, Anti-Money Laundering Law or Sanctions.

(v) Not directly or indirectly use, lend or contribute the proceeds of any Loan or any portion thereof for any purpose that would breach any Anti-Corruption Law, Anti-Money Laundering Law or Sanctions.

(vi) In order to comply with the “know your customer/borrower” requirements of the Anti-Money Laundering Laws, promptly provide to the Administrative Agent upon its reasonable request from time to time (A) information relating to individuals and entities affiliated with any Loan Party or any Subsidiary that maintain a business relationship with the Administrative Agent, and (B) such identifying information and documentation as may be available for such Loan Party or such Subsidiary in order to enable the Administrative Agent or any Lender to comply with Anti-Money Laundering Laws, including, to the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to such Loan Party.

(o) Lender Meetings. Upon the request of any Agent or the Required Lenders (which request, so long as no Event of Default shall have occurred and be continuing, shall not be made more than quarterly), participate in a meeting or conference call with the Agents and the Lenders (or at such times and, if applicable, locations as may be agreed to by the Administrative Borrower and such Agent or the Required Lenders) at which the chief financial officer or the principal accounting officer of the Parent shall discuss the financial condition and results of operation of the Parent and its Subsidiaries for the most recently ended fiscal quarter, and such other matters as the Agent or Required Lenders may request.

(p) Board Materials. The Administrative Agent shall have the right to receive, and the Parent shall promptly send to the Administrative Agent, all formal written information provided to the Board of Directors of Holdings in anticipation of, at or following each regular quarterly or annual meeting (whether telephonic or otherwise) of such Board of Directors, within ten days following such meeting, and the Parent shall cause the Board of Directors of Holdings to be the primary oversight body for the Loan Parties as a whole. The Administrative Agent (and to the extent any such information is distributed by the Administrative Agent to any Lender, such Lender) shall keep such materials and information confidential in accordance with Section 12.19 of this Agreement. Notwithstanding the foregoing, the Parent reserves the right to exclude any portion of any material if (A) necessary or advisable to preserve the attorney-client privilege or attorney work product privilege, (B) such material involves the Loan Documents or compliance with the terms thereof or if the Administrative Agent’s receipt of such information could result in a conflict of interest as determined by the Parent in its reasonable discretion, (C) the material relates to refinancing all or any portion of the Obligations or any confidential change of control, PIPE transaction or equity offering, or (D) in respect of which disclosure to the Administrative Agent is prohibited by law or *bona fide* third party confidentiality or fiduciary obligations.

(q) Further Assurances. Take such action and execute, acknowledge and deliver, and cause each of its Subsidiaries to take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as any Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement and the other Loan Documents, (ii) to subject to valid and perfected first priority Liens any of the Collateral or any other property of any Loan Party and its Subsidiaries, (iii) to establish and maintain the validity and effectiveness of any of the Loan Documents and the validity, perfection and priority of the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer and confirm unto each Secured Party the rights now or hereafter intended to be granted to it under this Agreement or any other Loan Document. In furtherance of the foregoing, to the maximum extent permitted by applicable law, each Loan Party (i) authorizes each Agent to file any financing statement required hereunder or under any other Loan Document, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (ii) ratifies the filing of any financing statement, and any continuation statement or amendment with respect thereto, filed without the signature of such Loan Party prior to the date hereof.

(r) Material Subsidiary. If at any time after the Effective Date, BRCC GC LLC ceases to be an Immaterial Subsidiary, the Borrowers shall promptly notify the Collateral Agent in writing and, at the request of the Collateral Agent, deliver a legal opinion with respect to such Loan Party substantially similar to the legal opinion delivered on the Effective Date and otherwise in form and substance reasonably satisfactory to the Collateral Agent.

Section 7.02. Negative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, nor shall it cause or permit any of Subsidiary to, unless the Required Lenders shall otherwise consent in writing:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, whether now owned or hereafter acquired; file or suffer to exist under the Uniform Commercial Code or any Requirement of Law of any jurisdiction, a financing statement (or the equivalent thereof) that names it or any of its Subsidiaries as debtor; sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof) other than, as to all of the above, Permitted Liens.

(b) Indebtedness. Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, assume, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(c) Fundamental Changes; Dispositions.

(i) Wind-up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, or permit any of its Subsidiaries to do (or agree to do) any of the foregoing; provided that (1) any Immaterial Subsidiary (other than the Borrower) may dissolve, liquidate or wind up its affairs if it owns no material assets, engages in no business and otherwise has no activities other than activities related to the maintenance of its existence and good standing, (2) subject to the terms and conditions contained in the definition of "Permitted Acquisition", any Permitted Acquisition may be structured as a merger, consolidation or amalgamation and (3) any Subsidiary of any Loan Party (other than the Borrower) may merge, consolidate or amalgamate with any one or more other Subsidiaries, so long as, in each case, (A) no other provision of this Agreement would be violated thereby, (B) such Loan Party delivers to the Agents at least five Business Days (or such longer period as agreed to by the Collateral Agent) after the consummation thereof (or, in the case of a Permitted Acquisition, within the time periods required by clause (c) of the definition thereof) true, correct and complete copies of all material agreements, documents and instruments relating to such merger, consolidation or amalgamation, including the certificate or certificates of merger or amalgamation to be filed with each appropriate Secretary of State (or equivalent thereof) with a copy as filed promptly after such filing, (C) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such transaction, (D) the Lenders' rights in any Collateral, including the existence, perfection and priority of any Lien thereon, are not adversely affected in any material respect by such merger, consolidation or amalgamation, (E) if such transaction involves the Borrower, the surviving entity of such transaction shall be the Borrower, and (F) if such transaction involves a Loan Party, either (x) the surviving entity of such transaction shall be a Loan Party or (y) the surviving Subsidiary (other than any Excluded Subsidiary), if not already a Loan Party, shall (at the time of the consummation of such transaction) be joined as a Loan Party hereunder pursuant to a Joinder Agreement and shall otherwise comply with the requirements of Section 7.01(b) as if such surviving Subsidiary was a newly acquired Subsidiary (provided that such surviving Subsidiary shall comply with the requirements of Section 7.01(b) at the time of the consummation of such transaction); and

(ii) Make any Disposition, whether in one transaction or a series of related transactions, of all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing; provided that any Loan Party and its Subsidiaries may make Permitted Dispositions; provided, further, that the proceeds of any Permitted Disposition of Term Priority Collateral shall be deposited into and maintained (until otherwise used in accordance with this Agreement) in the Asset Sales Proceeds Account.

Notwithstanding anything herein to the contrary in this clause (c), in no event shall any Affiliate of a Loan Party that is not a Loan Party own, hold or exclusively license any Material Asset.

(d) Nature of Business; Passive Holding Company.

(i) Engage in any line of business except those lines of business described on Schedule 6.01(l) and any business reasonably related, incidental or ancillary thereto.

(ii) Permit the Parent to have any material liabilities (other than liabilities of the Parent arising under the Loan Documents, the ABL Facility Documents, the Tax Receivable Agreement and in respect of any Permitted Indebtedness), own any material assets (other than the Equity Interests of its Subsidiaries) or engage in any operations or business (other than relating to the ownership of its Subsidiaries).

(iii) Solely with respect to Holdings, (A) engage in any business or business activity other than (1) the ownership and acquisition of Equity Interests in the Parent and its Subsidiaries, (2) the actions required or advisable by law to maintain its existence and separate corporate or other legal structure, (3) the payment of taxes and other customary obligations, (4) the issuance, sale and redemption of Qualified Equity Interests, (5) the receipt, holding (but not in excess of five days) and further distribution of the proceeds of Permitted Restricted Payments, (6) the holding of directors' and shareholders' meetings, preparation of corporate and similar records and other activities required or advisable to maintain its existence and separate corporate or other legal structure, (7) the preparation of reports to, and notices to and filings with, Governmental Authorities and to the holders of its Equity Interests, and (8) other activities related, ancillary or incidental to its maintenance and continuance and to the foregoing activities, (B) (1) own or hold any asset other than Equity Interests in the Parent (other than the proceeds of Permitted Restricted Payments for no longer than five days), (2) incur, or have any obligation with respect to, any Indebtedness or issue any Disqualified Equity Interests, (3) hold proceeds of Qualified Equity Interests issued by it for longer than three Business Days, or (4) cease to remain Parent's sole managing member (as provided in Parent's limited liability company agreement as in effect on the Effective Date). Any proceeds of an Equity Issuance received by Holdings shall be contributed by it to Parent within three Business Days after receipt thereof.

(e) Loans, Advances, Investments, Etc. Make or commit or agree to make, or permit any of its Subsidiaries make or commit or agree to make, any Investment in any other Person except for Permitted Investments. Notwithstanding anything herein to the contrary in this clause (e), in no event shall any Affiliate of a Loan Party that is not a Loan Party own, hold or exclusively license any Material Asset.

(f) Sale and Leaseback Transactions. Enter into, or permit any of its Subsidiaries to enter into, any Sale and Leaseback Transaction unless (i) such Sale and Leaseback Transaction is for the sale or transfer of real property for cash and fair market value (as reasonably determined at the time of such sale or transfer in good faith by the Parent), (ii) any Capitalized Lease Obligations or Liens arising in connection therewith are expressly permitted under Section 7.02(a) and (b), as applicable, (iii) the Total Net Leverage Ratio, determined on a pro forma basis as of the last day of the most recently ended Test Period, after giving effect to such Sale and Leaseback Transaction, does not exceed 3.00 to 1.00, and (iv) the Net Cash Proceeds of such Sale and Leaseback Transaction are paid to the Administrative Agent for the benefit of the Agents and the Lenders pursuant to the terms of Section 2.05(c)(ii) or applied as provided in Section 2.05(c)(vi). Notwithstanding anything herein to the contrary in this clause (f), in no event shall any Affiliate of a Loan Party that is not a Loan Party own, hold or exclusively license any Material Asset.

(g) Restricted Payments. Make or permit any of its Subsidiaries to make any Restricted Payment other than Permitted Restricted Payments.

(h) Federal Reserve Regulations. Permit any Loan or the proceeds of any Loan under this Agreement to be used for any purpose that would cause such Loan to be a margin loan under the provisions of Regulation T, U or X of the Board.

(i) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) transactions consummated in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair and reasonable consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, and that are fully disclosed to the Agents prior to the consummation thereof if they involve one or more payments by the Parent or any of its Subsidiaries in excess of \$100,000 for any single transaction or series of related transactions, (ii) transactions with another Loan Party, (iii) transactions permitted by Section 7.02(e) and Section 7.02(g), (iv) reasonable and customary director and officer compensation (including bonuses and stock option programs), benefits, indemnification and severance arrangements, in each case, in the ordinary course of business, and (v) transactions described on Schedule 7.02(i).

(j) Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Loan Party or any Subsidiary (i) to pay dividends or to make any other distribution on any shares of Equity Interests of such Loan Party or any Subsidiary, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided that nothing in this Section 7.02(k) shall prohibit or restrict compliance with:

(A) this Agreement and the other Loan Documents;

(B) the ABL Facility Documents and any other agreement in effect on the date of this Agreement and described on Schedule 7.02(k), or any extension, replacement or continuation of any such agreement; provided, that, any such encumbrance or restriction contained in such extended, replaced or continued agreement is no less favorable to the Agents and the Lenders than the encumbrance or restriction under or pursuant to the agreement so extended, replaced or continued;

(C) any applicable law, rule or regulation (including applicable currency control laws and applicable state corporate statutes restricting the payment of dividends in certain circumstances);

(D) in the case of clause (iv) of this Section 7.02(k), (1) customary restrictions on the subletting, assignment or transfer of any specified property or asset set forth in a lease, license, asset sale agreement or similar contract for the conveyance of such property or asset and (2) instrument or other document evidencing a Permitted Lien (or the Indebtedness secured thereby) from restricting on customary terms the transfer of any property or assets subject thereto;

(E) customary restrictions on dispositions of real property interests in reciprocal easement agreements;

(F) customary restrictions in agreements for the sale of assets on the transfer or encumbrance of such assets during an interim period prior to the closing of the sale of such assets; or

(G) customary restrictions in contracts that prohibit the assignment of such contract.

(k) Limitations on Negative Pledges. Enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) this Agreement and the other Loan Documents, (ii) restrictions or conditions imposed by the ABL Facility Documents, (iii) restrictions or conditions imposed by any agreement relating to any other secured Indebtedness permitted by Section 7.02(b) if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iv) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of assets or of a Subsidiary pending such sale or other disposition; provided that such restrictions and conditions apply only to the assets or Subsidiary to be sold or disposed of and such sale or disposition is permitted hereunder, and (v) customary provisions in leases restricting the assignment or sublet thereof.

(l) Modifications of Indebtedness, Organizational Documents and Certain Other Agreements; Etc

(i) Amend, modify or otherwise change (or permit the amendment, modification or other change in any manner of) any of the provisions of any of its or its Subsidiaries' Indebtedness or of any instrument or agreement (including any purchase agreement, indenture, loan agreement or security agreement) relating to any such Indebtedness if such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Indebtedness, would increase the interest rate applicable to such Indebtedness, would add any covenant or event of default, would change the subordination provision, if any, of such Indebtedness, or would otherwise be adverse to the Agents, Lenders or the issuer of such Indebtedness in any respect;

(ii) except for the Obligations under this Agreement and the ABL Debt in accordance with the ABL Facility Documents, (A) make, or permit any Subsidiary to make, any voluntary or optional payment (including any payment of interest in cash that, at the option of the issuer, may be paid in cash or in kind), prepayment, redemption, defeasance, sinking fund payment or other acquisition for value of any of its or its Subsidiaries' Indebtedness (including by way of depositing money or securities with the trustee therefor before the date required for the purpose of paying any portion of such Indebtedness when due), (B) refund, refinance, replace or exchange any Indebtedness (other than with respect to Permitted Refinancing Indebtedness), (C) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Subordinated Indebtedness in violation of the subordination provisions thereof or any subordination agreement with respect thereto, or (D) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Indebtedness as a result of any asset sale, change of control, issuance and sale of debt or equity securities or similar event, or give any notice with respect to any of the foregoing;

(iii) (A) amend, modify or otherwise change, or permit any Subsidiary to amend, modify or otherwise change, (x) any of its Governing Documents (including by the filing or modification of any certificate of designation, or any agreement or arrangement entered into by it) with respect to any of its Equity Interests (including the Tax Receivable Agreement and any shareholders' agreement), or enter into any new agreement with respect to any of its Equity Interests, except any such amendments, modifications or changes or any such new agreements or arrangements pursuant to this clause (iii) which are not adverse to the Agents or the Lenders in any material respect; provided that no such amendment, modification or change or new agreement or arrangement shall provide for any plan of division pursuant to Section 18-217 of the Delaware Limited Liability Company Act (or other comparable event under any jurisdiction's law) or (y) any ABL Facility Document, other than to the extent permitted by the Intercreditor Agreement, or (B) amend, modify or otherwise change the tax designation (i.e. corporation, partnership, etc.) of Parent or its Subsidiaries (or any direct or indirect parent of Parent) in a manner that would cause a material adverse tax consequence to the Parent or any of its Subsidiaries; or

(iv) agree to any amendment, modification or other change to or waiver of any of its rights or obligations under any Material Contract if such amendment, modification, change or waiver would be adverse in any material respect to any Loan Party or any of its Subsidiaries or the Agents and the Lenders.

(m) Investment Company Act of 1940. Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act.

(n) Sanctioned Persons; Anti-Corruption Laws; Anti-Money Laundering Laws

(i) Conduct, nor permit any of its Subsidiaries to conduct, any business or engage in any transaction or deal with or for the benefit of any Sanctioned Person, including the making or receiving of any contribution of funds, goods or services to, from or for the benefit of any Sanctioned Person; or

(ii) Use, nor permit any of its Subsidiaries to use, directly or indirectly, any of the proceeds of any Loan, (A) to fund any activities or business of or with any Sanctioned Person or in any other manner that would result in a violation of any Sanctions by any Person (including by any Person participating in any Loan, whether as underwriter, advisor, investor or otherwise), or (B) for the purpose 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 Anti-Corruption Law.

Section 7.03. Financial Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) Total Net Leverage Ratio. Permit the Total Net Leverage Ratio of the Parent and its Subsidiaries for any period of four consecutive fiscal quarters of the Parent and its Subsidiaries ending on a date set forth below to be greater than the ratio set forth opposite such date:

<u>Fiscal Quarter End</u>	<u>Total Net Leverage Ratio</u>
March 31, 2025	4.00:1.00
June 30, 2025	4.00:1.00
September 30, 2025	4.00:1.00
December 31, 2025	3.50:1.00
March 31, 2026	3.50:1.00
June 30, 2026	3.50:1.00
September 30, 2026	3.50:1.00
December 31, 2026 and the end of each fiscal quarter thereafter	3.00:1.00

(b) Fixed Charge Coverage Ratio. Permit the Fixed Charge Coverage Ratio of the Parent and its Subsidiaries for any period of four consecutive fiscal quarters of the Parent and its Subsidiaries, commencing with the four consecutive fiscal quarter period ending March 31, 2025, to be less than 1.10:1.00.

(c) Liquidity. Permit Liquidity to be less than \$7,500,000 at any time.

ARTICLE VIII

CASH MANAGEMENT ARRANGEMENTS AND OTHER COLLATERAL MATTERS

Section 8.01. Cash Management Arrangements. (a) The Loan Parties shall establish and maintain cash management services in accordance with the terms of the ABL Credit Agreement and otherwise of a type and on terms reasonably satisfactory to the Agents; provided that the Loan Parties shall deposit or cause to be deposited promptly, and in any event no later than the next Business Day after the date of receipt thereof, all proceeds in respect of any Term Priority Collateral (including any proceeds arising from a Disposition thereof prior to reinvestment thereof or payment in accordance with Section 2.05(c)) and any other proceeds that may constitute Term Priority Collateral into the Asset Sales Proceeds Account.

(b) Within 60 days after the Effective Date (as such period may be extended in writing by the Collateral Agent in its sole and absolute discretion), the Loan Parties shall, with respect to each Cash Management Account (other than Excluded Accounts), deliver to the Collateral Agent a Control Agreement with respect to such Cash Management Account. From and after the date that is 60 days after the Effective Date (as such period may be extended in writing by the Collateral Agent in its sole and absolute discretion), the Loan Parties shall not maintain cash, Cash Equivalents or other amounts in any deposit account or securities account, unless the Collateral Agent shall have received a Control Agreement in respect of each such Cash Management Account (other than Excluded Accounts).

(c) So long as no Default or Event of Default has occurred and is continuing, the Borrowers may amend Schedule 8.01 to add or replace a Cash Management Bank or Cash Management Account; provided that (i) such prospective Cash Management Bank shall be reasonably satisfactory to the Collateral Agent and the Collateral Agent shall have consented in writing in advance to the opening of such Cash Management Account with the prospective Cash Management Bank, and (ii) prior to the time of the opening of such Cash Management Account, each Loan Party and such prospective Cash Management Bank shall have executed and delivered to the Collateral Agent a Control Agreement. Each Loan Party shall close any of its Cash Management Accounts (and establish replacement cash management accounts in accordance with the foregoing sentence) promptly and in any event within 30 days of notice from the Collateral Agent that the creditworthiness of any Cash Management Bank is no longer acceptable in the Collateral Agent's reasonable judgment.

ARTICLE IX

EVENTS OF DEFAULT

Section 9.01. Events of Default. Each of the following events shall constitute an event of default (each, an "Event of Default"):

(a) any Borrower shall fail to pay, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (i) any interest on any Loan, any Collateral Agent Advance or any fee, indemnity or other amount payable under this Agreement (other than any portion thereof constituting principal of the Loans) or any other Loan Document, and such failure continues for a period of three Business Days or (ii) all or any portion of the principal of the Loans;

(b) any representation or warranty made or deemed made by or on behalf of Holdings, any Loan Party, any Subsidiary or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any certificate or other writing delivered to any Secured Party pursuant to any Loan Document shall have been incorrect in any material respect (or in any respect if such representation or warranty is qualified or modified as to materiality or "Material Adverse Effect" in the text thereof) when made or deemed made;

(c) (x) Holdings, any Loan Party or any Subsidiary shall fail to perform or comply with any covenant or agreement contained in Section 5.03, Section 7.01(a), Section 7.01(b), Section 7.01(d), Section 7.01(f), Section 7.01(k), Section 7.01(m), Section 7.01(o), Section 7.02 or Section 7.03 or Article VIII, (y) Holdings, the Parent or the Borrowers shall fail to comply with the covenant contained in Section 7.01(p), and such failure shall remain unremedied for 5 Business Days after the earlier of the date a senior officer of Holdings or any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to the Borrowers, or (z) any Loan Party shall fail to perform or comply with any covenant or agreement contained in any Security Agreement to which it is a party or any Mortgage to which it is a party;

(d) Holdings, any Loan Party or any Subsidiary shall fail to perform or comply with any other term, covenant or agreement contained in any Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 9.01, such failure, if capable of being remedied, shall remain unremedied for 30 days after the earlier of the date a senior officer of Holdings or any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to the Borrowers;

(e) Holdings, any Loan Party or any Subsidiary shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any principal, interest or other amount payable in respect of the ABL Debt or any other Indebtedness (excluding Indebtedness evidenced by this Agreement) having an aggregate amount outstanding in excess of \$2,500,000, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or any other default under any agreement or instrument relating to any such Indebtedness, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit (with or without the giving of notice, the lapse of time or both) the acceleration of, the maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case, prior to the stated maturity thereof;

(f) Holdings, any Loan Party or any Subsidiary (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors (including any Debtor Relief Law), or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall be generally not paying its debts as such debts become due or shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any action to authorize or effect any of the actions set forth above in this subsection (f);

(g) any proceeding shall be instituted against Holdings, any Loan Party or any Subsidiary seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of 30 days or any of the actions sought in such proceeding (including the entry of an order for relief against any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur;

(h) any material provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by any Loan Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any Loan Document;

(i) any Security Agreement, any Mortgage or any other Collateral Document, after delivery thereof pursuant hereto, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any Collateral purported to be covered thereby, or any Loan Party shall so assert in writing;

(j) one or more judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of money exceeding \$2,500,000 in the aggregate (except to the extent covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has been notified and has not denied coverage) shall be rendered against Holdings, any Loan Party or any Subsidiary and the same shall remain unsatisfied, undischarged, unvacated, unbonded or unstayed pending appeal for a period in excess of 30 consecutive days;

(k) any Loan Party is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting, or otherwise ceases to conduct for any reason whatsoever, all or any material part of its business for more than 30 days;

(l) any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than 30 consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Loan Party, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect;

(m) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party, if such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect;

(n) the indictment of any Loan Party or any senior officer thereof under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party or any senior officer thereof, that results in or could reasonably be expected to result in a forfeiture to any Governmental Authority of any material portion of the property of such Person;

(o) (i) there shall occur one or more ERISA Events that individually or in the aggregate results in, or could reasonably be expected to result in, a Material Adverse Effect, or (ii) there exists any fact or circumstance that could reasonably be expected to result in the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 4068 of ERISA upon the property or rights to property of any Loan Party or any of its ERISA Affiliates;

(p) the provisions of the Intercreditor Agreement shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the ABL Debt;

(q) Holdings engages in any business or activity or acquires any asset that is not permitted by Section 7.02(d)(iii); or

(r) a Change of Control shall have occurred;

then, and in any such event, the Collateral Agent may, and shall at the request of the Required Lenders, by notice to the Administrative Borrower, (i) terminate or reduce all Commitments, whereupon all Commitments shall immediately be so terminated or reduced, (ii) declare all or any portion of the Loans then outstanding to be accelerated and due and payable, whereupon all or such portion of the aggregate principal of all Loans, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, together with the payment of the Applicable Premium with respect to the Commitments so terminated and the Loans so repaid, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party and (iii) exercise any and all of its other rights and remedies under applicable law, hereunder and under the other Loan Documents; provided, however, that upon the occurrence of any Event of Default described in subsection (f) or (g) of this Section 9.01 with respect to any Loan Party, without any notice to any Loan Party or any other Person or any act by any Agent or any Lender, all Commitments shall automatically terminate and all Loans then outstanding, together with all accrued and unpaid interest thereon, all fees and all other amounts due under this Agreement and the other Loan Documents, including, the Applicable Premium, shall be accelerated and become due and payable automatically and immediately, without presentment, demand, protest or notice of any kind, all of which are expressly waived by each Loan Party.

Section 9.02. Cure Right. In the event that the Borrowers fail to comply with the requirements of any financial covenant set forth in Section 7.03(a) or 7.03(b), until the expiration of the 15th day after the date on which financial statements are required to be delivered with respect to the applicable fiscal quarter hereunder, the Parent shall have the right to issue Permitted Cure Equity for cash or otherwise receive cash contributions to the capital of the Parent, and, in each case, to contribute any such cash to the capital of the Borrowers, and apply the amount of the proceeds thereof to increase Consolidated EBITDA with respect to such applicable quarter (the “Cure Right”); provided that (a) such proceeds are actually received by the Borrowers no later than 15 days after the date on which financial statements are required to be delivered with respect to such fiscal quarter hereunder, (b) such proceeds do not exceed the aggregate amount necessary to cure (by addition to Consolidated EBITDA) such Event of Default under Section 7.03(a) or 7.03(b), as applicable, for such period, (c) the Cure Right shall not be exercised more than five times during the term of the Loans, (d) in each period of four fiscal quarters, there shall be at least two fiscal quarters during which the Cure Right is not exercised and the Cure Right shall not be exercised in any two consecutive fiscal quarters, (e) there shall be no pro forma reduction in Indebtedness or cash netting with the proceeds of the Cure Right for purposes of determining compliance with the financial covenants in Section 7.03 or for determining any pricing, financial covenant based conditions or baskets with respect to the covenants contained in this Agreement, in each case in the fiscal quarter in which the Cure Right is used or subsequent periods that include such fiscal quarter (other than, with respect to any future period, to the extent of any portion of such proceeds that are actually applied to repay Indebtedness), (g) such proceeds shall be disregarded for all other purposes of this Agreement (including for purposes of determining compliance with the financial covenant in Section 7.03(c) and for determining any pricing, financial covenant based conditions or baskets with respect to the covenants contained in this Agreement), in each case, in the fiscal quarter in which the Cure Right is used, other than for purposes of increasing Consolidated EBITDA for purposes of the financial covenant under Sections 7.03(a) and 7.03(b) as provided above in this Section 9.02, and (h) such proceeds shall be applied to prepay the Loans in accordance with Section 2.05(c)(v). If, after giving effect to the foregoing pro forma adjustment (but not, for the avoidance of doubt, giving pro forma adjustment to any repayment of Indebtedness or cash netting in connection therewith), the Borrowers are in compliance with the financial covenants set forth in Section 7.03(a) and (b), the Borrowers shall be deemed to have satisfied the requirements of such Section as of the relevant date of determination with the same effect as though there had been no failure to comply on such date, and the applicable breach or default of such Section 7.03(a) or 7.03(b) that had occurred shall be deemed cured for purposes of this Agreement. The parties hereby acknowledge that this Section may not be relied on for purposes of calculating any financial ratios other than as applicable to Section 7.03(a) or 7.03(b) and, other than in connection with any reduction in Indebtedness for purposes of any future period, shall not result in any adjustment to any amounts other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence.

ARTICLE X

AGENTS

Section 10.01. Appointment. Each Lender (and each subsequent maker of any Loan by its making thereof) hereby irrevocably appoints, authorizes and empowers the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto, including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loans outstanding hereunder and all other amounts accrued hereunder for the account of the Lenders and paid to such Agent, and, subject to Section 2.02, to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by such Agent and not required to be delivered to each Lender pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Lenders for any Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Loan Document; (v) to make the Loans and Collateral Agent Advances, for such Agent or on behalf of the applicable Lenders as provided in this Agreement or any other Loan Document; (vi) to perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Loan Document; (vii) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; (viii) subject to Section 10.03, to take such action as such Agent deems appropriate on its behalf to administer the Loans and the Loan Documents and to exercise such other powers delegated to such Agent by the terms hereof or the other Loan Documents (including the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations); and (ix) to act with respect to all Collateral under the Loan Documents, including for purposes of acquiring, bidding (including credit bidding), disposing (including pursuant to the applicable provision of the Bankruptcy Code), holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations. Each Secured Party agrees that no Agent is under any obligation to credit bid any part of the Obligations or to purchase or retain or acquire any portion of the Collateral. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including enforcement or collection of the Loans), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) shall be binding upon all Lenders and all makers of Loans; provided that the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law. Each Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. The Agents and any such sub-agent may perform any and all of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agents and any such sub-agent.

Section 10.02. Nature of Duties; Delegation. (a) The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Loan Documents. The duties of the Agents shall be mechanical and administrative in nature. The Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and the continuance of the Loans hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the Collateral without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and neither the Agents nor any of their Related Parties shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into their possession before the initial Loan hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Lender, each Agent shall provide to such Lender any documents or reports delivered to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Loan Document. If any Agent seeks the consent or approval of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Lender. Each Agent shall promptly notify each Lender any time that the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) have instructed such Agent to act or refrain from acting pursuant hereto.

(b) Each Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any of its Related Parties or any other trustee, co-agent or other Person (including any Lender). Any such Related Party, trustee, co-agent or other Person shall benefit from this Article X to the extent provided by the applicable Agent.

Section 10.03. Rights, Exculpation, Etc. The Agents and their Related Parties shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Loan Documents, except for their own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Loan as the owner thereof until the Collateral Agent receives written notice of the assignment or transfer thereof, pursuant to Section 12.07 hereof, signed by such payee and in form satisfactory to the Collateral Agent; (ii) may consult with legal counsel (including counsel to any Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 4.03, and if any such apportionment or distribution is subsequently determined to have been made in error, and the sole recourse of any Lender to whom payment was due but not made shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents the Agents are permitted or required to take or to grant, and if such instructions are promptly requested, the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until they shall have received such instructions from the Required Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents).

Section 10.04. Reliance. Each Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any oral communication or telephone message believed by it in good faith 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 Agreement or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

Section 10.05. Indemnification. To the extent that any Agent or any Related Party of the foregoing is not reimbursed and indemnified by any Loan Party, and whether or not such Agent has made demand on any Loan Party for the same, the Lenders will, within five days of written demand by such Agent, reimburse such Agent and such Related Parties for and indemnify such Agent and such Related Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including client charges and expenses of counsel or any other advisor to such Agent and such Related Parties), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent and the Related Parties in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by such Agent and such Related Parties under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, including advances and disbursements made pursuant to Section 10.08; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from such Agent's or such Related Party's gross negligence or willful misconduct. The obligations of the Lenders under this Section 10.05 shall survive the payment in full of the Loans and the termination of this Agreement.

Section 10.06. Agents Individually. With respect to its Pro Rata Share of the Total Commitment hereunder and the Loans made by it, each Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or maker of a Loan. The terms "Lenders" or "Required Lenders" or any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Lender or one of the Required Lenders. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with any Borrower as if it were not acting as an Agent pursuant hereto without any duty to account to the other Lenders.

Section 10.07. Successor Agent. (a) Any Agent may at any time give at least 30 days prior written notice of its resignation to the Lenders and the Administrative Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor Agent. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by such Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Lender directly, until such time, if any, as a successor Agent shall have been appointed as provided for above. Upon the acceptance of a successor's Agent's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights (other than any rights of reimbursement for any costs, expenses, indemnities or other amounts due and owing to the Agent prior to the resignation thereof), powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article, Section 12.04 and Section 12.15 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

Section 10.08. Collateral Matters.

(a) The Collateral Agent may from time to time make such disbursements and advances ("Collateral Agent Advances") which the Collateral Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Borrowers of the Loans and other Obligations or to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including costs, fees and expenses as described in Section 12.04. The Collateral Agent Advances shall be repayable on demand and be secured by the Collateral and shall bear interest at a rate per annum equal to the rate then applicable to Reference Rate Loans. The Collateral Agent Advances shall constitute Obligations hereunder. The Collateral Agent shall notify each Lender and the Administrative Borrower in writing of each such Collateral Agent Advance, which notice shall include a description of the purpose of such Collateral Agent Advance. Without limitation to its obligations pursuant to Section 10.05, each Lender agrees that it shall make available to the Collateral Agent, upon the Collateral Agent's demand, in Dollars in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Collateral Agent Advance. If such funds are not made available to the Collateral Agent by such Lender, the Collateral Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Collateral Agent, at the Federal Funds Rate for three Business Days and thereafter at the Reference Rate.

(b) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to (i) release any Lien granted to or held by the Collateral Agent upon any Collateral (A) upon termination of the Total Term Loan Commitment and payment and satisfaction of all Loans and all other Obligations (other than Contingent Indemnity Obligations) in accordance with the terms hereof; (B) constituting property being sold or disposed of in compliance with the terms of this Agreement and the other Loan Documents (other than any such sale to another Loan Party); (C) constituting Excluded Assets (as defined in the Security Agreement) or property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or (D) if approved, authorized or ratified in writing by the Lenders in accordance with Section 12.02; (ii) release any Subsidiary (other than any Borrower) that is a Loan Party from its obligations under the Guarantee if such Person ceases to be a Subsidiary or becomes an Excluded Subsidiary, in each case, as a result of a transaction or designation permitted hereunder; and (iii) release or subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (e) of the definition of Permitted Lien in connection with any Permitted Purchase Money Indebtedness.

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders (as set forth in Section 10.08(b)), each Lender agrees to confirm in writing, upon request by the Collateral Agent, the authority to release or subordinate any Collateral conferred upon the Collateral Agent under Section 10.08(b). Upon receipt by the Collateral Agent of confirmation from the Lenders of its authority to release or subordinate any particular item or types of Collateral, and upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release or subordination, as applicable, of the Liens granted to the Collateral Agent for the benefit of the Agents and the Lenders upon such Collateral; provided that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the Collateral retained by any Loan Party.

(d) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, each Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral under any Loan Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof, (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent, the Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and (iii) the Collateral Agent, as agent for and representative of the Agents and the Lenders (but not any other Agent or any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled (either directly or through one or more acquisition vehicles) for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral to be sold (A) at any public or private sale, (B) at any sale conducted by the Collateral Agent under the provisions of the Uniform Commercial Code (including pursuant to Sections 9-610 or 9-620 of the Uniform Commercial Code), (C) at any sale or foreclosure conducted by the Collateral Agent (whether by judicial action or otherwise) in accordance with applicable law or (D) any sale conducted pursuant to the provisions of any Debtor Relief Law (including Section 363 of the Bankruptcy Code), to use and apply all or any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. The Collateral Agent shall have its own independent right to demand payment of the amounts payable by the Borrowers under the Loan Documents, irrespective of any discharge of the Borrowers' obligations to pay those amounts to the other Lenders resulting from failure by them to take appropriate steps in insolvency proceedings affecting the Borrowers to preserve their entitlement to be paid those amounts.

(e) The Collateral Agent shall have no obligation whatsoever to any Lender to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 10.08 or in any other Loan Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein

Section 10.09. Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Agents and the Lenders as secured party. Should the Administrative Agent or any Lender obtain possession or control of any such Collateral, the Administrative Agent or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 10.10. No Reliance on any Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 C.F.R. § 1020.220, as hereafter amended or replaced ("CIP Regulations"), or any other Anti-Money Laundering Laws, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each Lender, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

Section 10.11. No Third Party Beneficiaries. The provisions of this Article are solely for the benefit of the Secured Parties, and no Loan Party or Affiliate of any Loan Party shall have rights as a third-party beneficiary of any of such provisions.

Section 10.12. No Fiduciary Relationship. It is understood and agreed that the use of the term “agent” herein or in any other Loan Document (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 10.13. Reports; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that each Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report with respect to the Parent or any of its Subsidiaries (each, a “Report”) prepared by or at the request of such Agent, and each Agent shall so furnish each Lender with each such Report,

(b) expressly agrees and acknowledges that the Agents (i) do not make any representation or warranty as to the accuracy of any Reports, and (ii) shall not be liable for any information contained in any Reports,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any Agent or other party performing any audit or examination will inspect only specific information regarding the Parent and its Subsidiaries and will rely significantly upon the Parent’s and its Subsidiaries’ books and records, as well as on representations of their personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 12.19, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender’s participation in, or the indemnifying Lender’s purchase of, a loan or loans of the Borrowers, and (ii) to pay and protect, and indemnify, defend and hold any Agent and any other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorneys’ fees and costs) incurred by any such Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 10.14. Collateral Custodian. Upon the occurrence and during the continuance of any Default or Event of Default, the Collateral Agent or its designee may at any time and from time to time employ and maintain on the premises of any Loan Party a custodian selected by the Collateral Agent or its designee who shall have full authority to do all acts necessary to protect the Agents' and the Lenders' interests. Each Loan Party hereby agrees to, and to cause its Subsidiaries to, cooperate with any such custodian and to do whatever the Collateral Agent or its designee may reasonably request to preserve the Collateral. All reasonable and documented costs and expenses incurred by the Collateral Agent or its designee by reason of the employment of the custodian shall be the responsibility of the Borrowers and subject to reimbursement pursuant to Section 12.04.

Section 10.15. Intercreditor Agreement. Each Lender hereby grants to the Collateral Agent all requisite authority to enter into or otherwise become bound by, and to perform its obligations and exercise its rights and remedies under and in accordance with the terms of, the Intercreditor Agreement (and any other intercreditor agreement and each supplement, modification, amendment, restatement or extension thereto) and to bind the Lenders thereto by the Collateral Agent's entering into or otherwise becoming bound thereby, and no further consent or approval on the part of any Lender is or will be required in connection with the performance by the Collateral Agent of the Intercreditor Agreement (and any other intercreditor agreement and each supplement, modification, amendment, restatement or extension thereto).

Section 10.16. Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law the Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties hereunder and under the other Loan Documents) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to the Collateral Agent and, in the event that the Collateral Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent hereunder and under the other Loan Documents.

Section 10.17. Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 10.18 and held in trust for the benefit of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received). A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender or any Person who has received funds on behalf of a Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender shall use commercially reasonable efforts to (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 10.18(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 10.18(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 10.18(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, to the rights and interests of such Lender) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower; provided that this Section 10.18 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrowers relative to the amount (or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from, or on behalf of (including through the exercise of remedies under any Loan Document), the Borrowers for the purpose of a payment on the Obligations.

(e) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including any defense based on "discharge for value" or any similar doctrine.

Each party's obligations, agreements and waivers under this Section 10.18 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, any Lender, the termination of the applicable Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE XI

GUARANTY

Section 11.01. Guaranty. Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees, as a primary obligor and not as a surety to each Secured Party and their respective permitted successors and assigns, the punctual payment in cash when due, without any demand or notice whatsoever, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrowers now or hereafter existing under any Loan Document, whether for principal, interest (including all interest that accrues after the commencement of any Insolvency Proceeding of any Borrower or any other Loan Party, whether or not a claim for post-filing interest is allowed in such Insolvency Proceeding) fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrowers, being the “Guaranteed Obligations”), and agrees to pay any and all expenses (including reasonable and documented counsel fees and expenses) incurred by the Secured Parties in enforcing any rights under the guaranty set forth in this Article XI. The Guarantors hereby jointly and severally agree that if the Borrowers or other Guarantors shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal. Without limiting the generality of the foregoing, each Guarantor’s liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrowers to the Secured Parties under any Loan Document but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving any Borrower or any other Loan Party. In no event shall the obligation of any Guarantor hereunder exceed the maximum amount such Guarantor could guarantee under any Debtor Relief Law.

Section 11.02. Guaranty Absolute. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Parties with respect thereto. Each Guarantor agrees that this Article XI constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be made by any Agent or any Lender to any Collateral. The obligations of each Guarantor under this Article XI are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article XI shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

- (a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document, including any extension of the time for any performance of or compliance with the Guaranteed Obligations, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or otherwise;

(c) the acceleration of maturity of any of the Obligations, or any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) the existence of any claim, set-off, defense or other right that any Guarantor may have at any time against any Person, including any Secured Party;

(e) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Loan Party; or

(f) any other circumstance (including any statute of limitations) or any existence of or reliance on any representation by the Secured Parties that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Article XI shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by Secured Parties or any other Person upon the insolvency, bankruptcy or reorganization of any Borrower, any other Loan Party or otherwise, all as though such payment had not been made.

Section 11.03. Waiver. Each Guarantor hereby waives (i) presentment, protest, promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article XI and any requirement that the Secured Parties exhaust any right or take any action against any Loan Party or any other Person or any Collateral or proof of reliance by any Secured Party upon this Guaranty, (iii) any right to compel or direct any Secured Party to seek payment or recovery of any amounts owed under this Article XI from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any Collateral, (iv) any requirement that any Secured Party protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any Collateral, and (v) any other defense available to any Guarantor. Each Guarantor agrees that the Secured Parties shall have no obligation to marshal any assets in favor of any Guarantor or against, or in payment of, any or all of the Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 11.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives any right to revoke this Article XI, and acknowledges that this Article XI is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Section 11.04. Continuing Guaranty: Assignments. This Article XI is a continuing guaranty and shall (a) remain in full force and effect until the later of the cash payment in full of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the Final Maturity Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including all or any portion of its Commitments, its Loans owing to it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 12.07.

Section 11.05. Subrogation. No Guarantor will exercise any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Article XI, including any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Secured Parties against any Loan Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Loan Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI shall have been paid in full in cash and the Final Maturity Date shall have occurred. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of (i) the payment in full in cash of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and (ii) the Final Maturity Date, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article XI, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Article XI thereafter arising. If (i) any Guarantor shall make payment to the Secured Parties of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI shall be paid in full in cash and (iii) the Final Maturity Date shall have occurred, the Secured Parties will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

Section 11.06. Contribution. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided that, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 11.06, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including in respect of this Section 11.06), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 11.06. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 11.06 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 11.06.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Notices, Etc.

(a) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be delivered by hand, sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier or email. In the case of notices or other communications to any Loan Party, Administrative Agent or the Collateral Agent, as the case may be, they shall be sent to the respective address set forth below (or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01):

Attention: Stephen Kadenacy, Chief Financial Officer; and
Andrew McCormick, General Counsel
Address: 1144 S 500 W., Salt Lake City, UT 84101
Email: Andrew.mccormick@blackriflecoffee.com

with a copy to:

Attention: Lindsay R. Sparks
Address: 101 California Street 48th Floor
San Francisco, CA 94111
Email: lindsaysparks@paulhastings.com

if to the Administrative Agent or the Collateral Agent, to it at the following address:

Blue Torch Finance LLC
c/o Blue Torch Capital LP
150 East 58th Street, 39th Floor
New York, New York 10155
Email: BlueTorchAgency@alterdomus.com

with a copy to:

SEI – Blue Torch Capital Loan Ops
1 Freedom Valley Drive
Oaks, Pennsylvania 19456
Telecopier: (469) 709-1839
Email: bluetorch.loanops@seic.com

in each case, with a copy to:

Orrick, Herrington & Sutcliffe LLP
51 W. 52nd Street
New York, New York 10019
Attention: B. J. Rosen
Email: bjrosen@orrick.com

All notices or other communications sent in accordance with this Section 12.01, shall be deemed received on the earlier of the date of actual receipt or three Business Days after the deposit thereof in the mail; provided that (i) notices sent by overnight courier service shall be deemed to have been given when received and (ii) notices sent by email shall be deemed to have been given upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement) (except that any notice by email, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient); provided, further, that notices to any Agent pursuant to Article II shall not be effective until received by such Agent.

(b) Electronic Communications.

(i) Each Agent and the Administrative Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Agents; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agents that it is incapable of receiving notices under such Article by electronic communication.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

Section 12.02. Amendments, Etc. (a) No amendment or waiver of any provision of this Agreement or any other Loan Document (excluding the Fee Letter), and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Agents and the Lenders or extending an existing Lien over additional property, by the Agents and the Borrowers (or by the Administrative Borrower on behalf of the Borrowers), (y) in the case of any other waiver or consent, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and (z) in the case of any other amendment, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and the Borrowers (or by the Administrative Borrower on behalf of the Borrowers), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no amendment, waiver or consent shall:

(i) increase the Commitment of any Lender, reduce the principal of, or interest on, the Loans payable to any Lender, reduce the amount of any fee payable for the account of any Lender, or postpone or extend any scheduled date fixed for any payment of principal of, or interest or fees on, the Loans payable to any Lender, in each case, without the written consent of such Lender;

(ii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders or any of them to take any action hereunder without the written consent of each Lender;

(iii) amend the definition of "Required Lenders" or "Pro Rata Share" without the written consent of each Lender;

(iv) release all or a substantially all of the Collateral (except as otherwise provided in this Agreement and the other Loan Documents), subordinate any Lien granted in favor of the Collateral Agent for the benefit of the Agents and the Lenders or release any Borrower or all of substantially all of the value of the Guarantees (except in connection with a Disposition of the Equity Interests of a Guarantor permitted by Section 7.02(c)(ii)), in each case, without the written consent of each Lender; provided, that the Required Lenders may elect to release all or a substantial portion of the Collateral without the requirement to obtain the written consent of each Lender if such release is in connection with (x) an exercise of remedies by the Collateral Agent at the direction of the Required Lenders pursuant to Section 9.01 or (y) any Disposition of all or a substantial portion of the Collateral by one or more of the Loan Parties with the consent of the Required Lenders after the occurrence and during the continuance of an Event of Default so long as such Disposition is conducted in a commercially reasonable manner as if such Disposition were a disposition of collateral by a secured creditor in accordance with Article 9 of the UCC;

(v) amend, modify or waive Section 4.02, Section 4.03 or this Section 12.02 without the written consent of each Lender; or

(vi) change the provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of one Class differently from the rights of Lenders holding Loans of any other Class without the prior written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each adversely affected Class.

(b) Notwithstanding anything to the contrary in Section 12.02(a):

(i) no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Lender) under this Agreement or the other Loan Documents;

(ii) any amendment, waiver or consent to any provision of this Agreement (including Sections 4.01 and 4.02) that permits any Loan Party, Holdings (or other direct or indirect equity holder of the Parent) or any of their respective Affiliates to purchase Loans on a non-pro rata basis, become an eligible assignee pursuant to Section 12.07 or make offers to make optional prepayments on a non-pro rata basis shall require the prior written consent of the Required Lenders rather than the prior written consent of each Lender directly affected thereby;

(iii) any Control Agreement, Guaranty, Mortgage, Security Agreement, Intellectual Property Security Agreement, collateral access agreement, landlord waiver or other agreement or document purporting to create or perfect a security interest or grant a Lien in any of the Collateral, in each case, as amended, restated, amended and restated, supplemented or otherwise modified from time to time (each, a "Collateral Document") may be amended, waived or otherwise modified with the consent of the applicable Agent and the applicable Loan Party without the need to obtain the consent of any Lender or any other Person if such amendment, modification, supplement or waiver is delivered in order (A) to comply with local Requirements of Law (including foreign law or regulatory requirements) or advice of local counsel, (B) to cure any ambiguity, inconsistency, omission, mistake or defect or (C) to cause such Collateral Document to be consistent with this Agreement and the other Loan Documents, and if the Administrative Agent and the Administrative Borrower shall have jointly identified an ambiguity, inconsistency, omission, mistake or defect, in each case, in any provision of any Loan Document (other than a Collateral Document), then the Administrative Agent and the Administrative Borrower shall be permitted to amend such provision; any amendment, waiver or modification pursuant to this paragraph shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof;

(iv) no consent of any Loan Party shall be required to change any order of priority set forth in Section 4.03;

(v) the Administrative Agent and the Administrative Borrower may enter into an amendment to this Agreement (A) pursuant to Section 2.07(h) to reflect an alternate service or index rate and such other related changes to this Agreement as may be applicable and (B) in accordance with Section 2.11 to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Term Loan Commitment and the Incremental Term Loans evidenced thereby; and

(vi) no Defaulting Lender, Loan Party, Holdings (or other direct or indirect equity holder of the Parent) or any of their respective Affiliates that is a Lender shall have any right to approve or disapprove any amendment, waiver or consent under the Loan Documents and any Loans held by such Person for purposes hereof shall be automatically deemed to be voted pro rata according to the Loans of all other Lenders in the aggregate (other than such Defaulting Lender, Loan Party, Holdings (or other direct or indirect equity holder of the Parent) or Affiliate).

(c) If any action to be taken by the Lenders hereunder requires the consent, authorization, or agreement of all of the Lenders or any Lender affected thereby, and a Lender other than the Collateral Agent and the Administrative Agent and their respective Affiliates and Related Funds (the "Holdout Lender") fails to give its consent, authorization, or agreement, then the Collateral Agent, upon at least five Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute lenders (each, a "Replacement Lender"), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 12.07. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make its Pro Rata Share of Loans.

Section 12.03. No Waiver; Remedies, Etc. No failure on the part of any Agent or any Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Lenders provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Lenders under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agents and the Lenders to exercise any of their rights under any other Loan Document against such party or against any other Person.

Section 12.04. Expenses; Taxes; Attorneys' Fees. The Borrowers will pay on demand, all reasonable and documented costs and expenses incurred by or on behalf of each Agent (and, in the case of clauses (b) through (m) below, each Lender), regardless of whether the transactions contemplated hereby are consummated, including reasonable and documented fees, costs, client charges and expenses of counsel for each Agent (and, in the case of clauses (b) through (m) below, each Lender), accounting, due diligence, periodic field audits, physical counts, valuations, investigations, searches and filings, monitoring of assets, appraisals of Collateral, the rating of the Loans, title searches and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals, arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents (including the preparation of any additional Loan Documents pursuant to Section 7.01(b) or the review of any of the agreements, instruments and documents referred to in Section 7.01(f)), (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, (c) the preservation and protection of the Agents' or any of the Lenders' rights under this Agreement or the other Loan Documents, (d) the defense of any claim or action asserted or brought against any Agent or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the Agents' or the Lenders' claims against any Loan Party, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other Loan Document, (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent or any Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement or any other Loan Document, (g) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in connection with this Agreement or any other Loan Document, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Loan Document, (i) any attempt to collect from any Loan Party, (j) any Environmental Claim, Environmental Liability or Remedial Action arising from or in connection with the past, present or future operations of, or any property currently, formerly or in the future owned, leased or operated by, any Loan Party, any of its Subsidiaries or any predecessor in interest, (k) any Environmental Lien, (l) the rating of the Loans by one or more rating agencies in connection with any Lender's Securitization, or (m) the receipt by any Agent or any Lender of any advice from professionals with respect to any of the foregoing. Without limitation of the foregoing or any other provision of any Loan Document: (x) the Borrowers agree to pay all broker fees that may become due in connection with the transactions contemplated by this Agreement and the other Loan Documents and (y) if the Borrowers fail to perform any covenant or agreement contained herein or in any other Loan Document, with written notice to the Administrative Borrower, any Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such Agent incurred in connection therewith shall be reimbursed on demand by the Borrowers. The obligations of the Borrowers under this Section 12.04 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents. All amounts due under this Section 12.04 shall be payable not later than ten Business Days after demand therefor.

Section 12.05. Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent or any Lender may, and is hereby authorized to, at any time and from time to time, without notice to any Loan Party (any such notice being expressly waived by the Loan Parties) and to the fullest extent permitted by law, set off and apply any and all deposits (other than Excluded Accounts) (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent or such Lender or any of their respective Affiliates to or for the credit or the account of any Loan Party against any and all obligations of the Loan Parties either now or hereafter existing under any Loan Document, irrespective of whether or not such Agent or such Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of set-off, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.04 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agents and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of set-off. Each Agent and each Lender agrees to notify such Loan Party promptly after any such set-off and application made by such Agent or such Lender or any of their respective Affiliates; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Lenders may have under this Agreement or any other Loan Documents of law or otherwise.

Section 12.06. Severability. Any provision of this Agreement 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 portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.07. Assignments and Participations.

(a) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each Agent and each Lender and their respective successors and assigns; provided that none of the Loan Parties may assign or transfer any of its rights hereunder or under the other Loan Documents without the prior written consent of each Lender and any such assignment without the Lenders' prior written consent shall be null and void.

(b) Subject to the conditions set forth in clause (c) below, each Lender may assign to one or more other lenders or other entities all or a portion of its rights and obligations under this Agreement with respect to all or a portion of its Term Loan Commitment and any Term Loan made by it with the written consent of the Collateral Agent and the Borrowers (not to be unreasonably withheld, conditioned or delayed); provided that (A) no written consent of the Collateral Agent or the Administrative Agent shall be required (x) in connection with any assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (y) if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Lender, (B) no consent of the Borrowers shall be required (x) in connection with any assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (y) if any Event of Default has occurred and is continuing, and (C) the Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Agents within ten Business Days after having received notice thereof.

(c) Assignments shall be subject to the following additional conditions:

(i) Each such assignment shall be in an amount which is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof (or the remainder of such Lender's Commitment) (except such minimum amount shall not apply to an assignment by a Lender to (A) a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof);

(ii) The parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance, an Assignment and Acceptance, together with any promissory note subject to such assignment and such parties shall deliver to the Administrative Agent, for the benefit of the Collateral Agent, a processing and recordation fee of \$5,000 (except the payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender) and all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and Anti-Money Laundering or terrorist financing rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation;

(iii) No such assignment shall be made to (A) any Loan Party, Holdings (or other direct or indirect equity holder of the Parent) or any of their respective Affiliates or (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(iv) the assignee, if it shall not already be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in a form acceptable to the Administrative Agent, applicable tax forms (as required under Section 2.09(d)) and all requested "know your customer" documentation.

(d) Upon such execution, delivery and acceptance, from and after the effective date specified in each Assignment and Acceptance and recordation on the Register, which effective date shall be at least three Business Days after the delivery thereof to the Administrative Agent (or such shorter period as shall be agreed to by the Administrative Agent and the parties to such assignment), (A) the assignee thereunder shall become a "Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(e) By executing and delivering an Assignment and Acceptance, the assigning Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning Lender, any Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(f) The Administrative Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain, or cause to be maintained at one of its offices, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitments of, and the principal amount of the Loans (and stated interest thereon) (the "Registered Loans") owing to each Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrowers, the Agents and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Administrative Borrower and any Lender at any reasonable time and from time to time upon reasonable prior written notice.

(g) Upon receipt by the Administrative Agent of a completed Assignment and Acceptance, and subject to any consent required from the Administrative Agent or the Collateral Agent pursuant to Section 12.07(b) (which consent of the applicable Agent must be evidenced by such Agent's execution of an acceptance to such Assignment and Acceptance), the Administrative Agent shall accept such assignment, record the information contained therein in the Register (as adjusted to reflect any principal payments on or amounts capitalized and added to the principal balance of the Loans and/or Commitment reductions made subsequent to the effective date of the applicable assignment, as confirmed in writing by the corresponding assignor and assignee in conjunction with delivery of the assignment to the Administrative Agent) and provide to the Collateral Agent a copy of the fully executed Assignment and Acceptance.

(h) A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s).

(i) If any Lender sells participations in a Registered Loan, such Lender shall, acting for this purpose as a non-fiduciary agent on behalf of the Borrowers, maintain, or cause to be maintained, a register, on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation (the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Administrative Borrower at any reasonable time and from time to time upon reasonable prior written notice. For the avoidance of doubt, no Agent (in its capacity as an Agent) shall have responsibility for maintaining a Participant Register or for ensuring that the Lenders observe the provisions of this clause (i).

(j) Any Non-U.S. Lender who purchases or is assigned or participates in any portion of such Registered Loan shall comply with Section 2.09(d).

(k) Each Lender may sell participations (without the consent of the Borrower, any Agent or any other Lender) to one or more banks or other entities (other than a natural person or to Holdings, the Parent or any of their Affiliates) in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitments and the Loans made by it); provided, that (i) such Lender's obligations under this Agreement (including its Commitments hereunder) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrowers, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents; and (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loans, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loans or the fees payable under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the Collateral or any Loan Party (except as set forth in Section 10.08 of this Agreement or any other Loan Document). The Loan Parties agree that each participant shall be entitled to the benefits, and subject to the requirements, of Section 2.09 and Section 2.10 of this Agreement with respect to its participation in any portion of the Commitments and the Loans as if it was a Lender; provided that such participant (A) agrees to be subject to the provisions of Section 2.09(f) as if it were an assignee under paragraph (b) of this Section 12.07 and (B) shall not be entitled to receive any greater payment under Section 2.09 or Section 2.10 with respect to any participation than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after such participant acquired the applicable participation.

(l) 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 such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or loans made to, or other indebtedness issued by, such Lender pursuant to a securitization transaction (including any structured warehouse credit facility, collateralized loan obligation transaction or similar facility or transaction, and including any further securitization of the indebtedness or equity issued under such a transaction) (a “Securitization”); provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. The Loan Parties shall cooperate with such Lender and its Affiliates to effect a Securitization, including by providing such information as may be reasonably requested by such Lender in connection with the rating of its Loans or any Securitization.

(m) Subject to Section 12.19, each Borrower authorizes each Lender to disclose to any participant, secured creditor of such Lender or assignee (each, a “Transferee”) and any prospective Transferee any and all financial information in such Lender’s possession concerning each Borrower and its Affiliates that has been delivered to such Lender by or on behalf of each Borrower and its Affiliates pursuant to this Agreement or that has been delivered to such Lender by or on behalf of each Borrower and its Affiliates in connection with such Lender’s credit evaluation of each Borrower and its Affiliates prior to becoming a party to this Agreement.

Section 12.08. Counterparts.

(a) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by electronic mail also shall deliver an original executed counterpart of this Agreement upon request of the Administrative Agent but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. Each of the parties hereto agrees and acknowledges that (i) the transaction consisting of this Agreement may be conducted by electronic means, (ii) it is such party’s intent that, if such party signs this Agreement using an electronic signature, it is signing, adopting and accepting this Agreement and that signing this Agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Agreement on paper and (iii) it is being provided with an electronic or paper copy of this Agreement in a usable format. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

(b) The words “execution,” “signed,” “signature,” and words of like import in this Agreement and the other Loan Documents, including any Assignment and Acceptance shall be deemed to include electronic signatures or electronic records each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signature in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 12.09. Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

Section 12.10. Consent to Jurisdiction; Service of Process and Venue.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY ANY MEANS PERMITTED BY APPLICABLE LAW, INCLUDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ADMINISTRATIVE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) Each Loan Party irrevocably and unconditionally agrees that it will not commence any action or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any Agent, any Lender or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof.

Section 12.11. Waiver of Jury Trial, Etc. EACH LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE LENDERS ENTERING INTO THIS AGREEMENT.

Section 12.12. Consent by the Agents and Lenders. Except as otherwise expressly set forth herein to the contrary or in any other Loan Document, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any Agent or any Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party and to which any Agent or any Lender has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent or such Lender, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

Section 12.13. No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 12.14. Reinstatement; Certain Payments. If any claim is ever made upon any Secured Party for repayment or recovery of any amount or amounts received by such Secured Party in payment or on account of any of the Obligations, such Secured Party shall give prompt notice of such claim to each other Agent and Lender and the Administrative Borrower, and if such Secured Party repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Secured Party or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Secured Party with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Secured Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Secured Party.

Section 12.15. Indemnification; Limitation of Liability for Certain Damages

(a) In addition to each Loan Party's other Obligations under this Agreement, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Secured Party and all of their respective Related Parties (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable and documented costs and expenses (including reasonable and documented attorneys' fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document, of any Environmental Claim or any other document executed in connection with the transactions contemplated by this Agreement, (ii) any Agent's or any Lender's furnishing of funds to the Borrowers under this Agreement or the other Loan Documents, including the management of any such Loans or the Borrowers' use of the proceeds thereof, (iii) the Agents and the Lenders relying on any instructions of the Administrative Borrower or the handling of the Collateral of the Borrowers as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement or the other Loan Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Loan Documents, or (v) any claim, including any Environmental Claim, litigation, investigation or proceeding relating to or arising out of any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided that the Loan Parties shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties, as determined by a final non-appealable judgment of a court of competent jurisdiction.

(b) To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees.

(c) No party hereto shall assert, and each party hereto hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that nothing in this clause (c) shall relieve any Loan Party of any obligation it may have to indemnify an Indemnitee as provided in clause (a) above.

(d) The indemnities and waivers set forth in this Section 12.15 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

(e) All amounts due under this Section 12.15 shall be payable not later than ten Business Days after demand therefor.

Section 12.16. Records. The unpaid principal of and interest on the Loans, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the Commitments, and the accrued and unpaid fees payable pursuant to Section 2.06 hereof, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 12.17. Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each Agent and each Lender and when the conditions precedent set forth in Section 5.01 hereof have been satisfied or waived in writing by the Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Agent and each Lender, and their respective successors and assigns, except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of each Agent and each Lender (and any such assignment without such written consent shall be null and void), and any assignment by any Lender shall be governed by Section 12.07 hereof.

Section 12.18. Highest Lawful Rate. It is the intention of the parties hereto that each Agent and each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Loan Document would be usurious as to any Agent or any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Agent or such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other Loan Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Agent or any Lender that is contracted for, taken, reserved, charged or received by such Agent or such Lender under this Agreement or any other Loan Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such Agent or such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender, as applicable, to the Borrowers); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Agent or any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall, subject to the last sentence of this Section 12.18, be canceled automatically by such Agent or such Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Agent or such Lender, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender to the Borrowers). All sums paid or agreed to be paid to any Agent or any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Agent or such Lender, be amortized, prorated, allocated and spread throughout the full term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any Agent or any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Agent or such Lender pursuant to this Section 12.18 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Agent or such Lender would be less than the amount of interest payable to such Agent or such Lender computed at the Highest Lawful Rate applicable to such Agent or such Lender, then the amount of interest payable to such Agent or such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Agent or such Lender until the total amount of interest payable to such Agent or such Lender shall equal the total amount of interest which would have been payable to such Agent or such Lender if the total amount of interest had been computed without giving effect to this Section 12.18.

For purposes of this Section 12.18, the term “applicable law” shall mean that law in effect from time to time and applicable to the loan transaction between the Borrowers, on the one hand, and the Agents and the Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America.

The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

Section 12.19. Confidentiality. Each Agent and each Lender agrees (on behalf of itself and its Related Parties) to use reasonable precautions to keep confidential, in accordance with its customary procedures for handling confidential information of this nature and in accordance with safe and sound practices of comparable commercial finance companies, any information supplied to it by the Loan Parties pursuant to this Agreement or the other Loan Documents which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information; provided that nothing herein shall limit the disclosure by any Agent or any Lender of any such information (i) to its Affiliates, its Related Parties or the Related Parties of any Person described in clause (ii) or (iii) below (it being understood that the Persons to whom such disclosure is made either will be informed of the confidential nature of such information and instructed to keep such information confidential in accordance with this Section 12.19 or is subject to other customary confidentiality obligations); (ii) to any other party hereto; (iii) to any assignee or participant (or prospective assignee or participant) or any party to a Securitization, so long as such assignee or participant (or prospective assignee or participant) or party to a Securitization agrees, in writing, to be bound by or is otherwise subject to customary confidentiality obligations (including confidentiality provisions similar in substance to this Section 12.19); (iv) to the extent required by any Requirement of Law or judicial process or as otherwise requested by any Governmental Authority; (v) to the National Association of Insurance Commissioners or any similar organization, any examiner, auditor or accountant or any nationally recognized rating agency; (vi) in connection with any litigation to which any Agent or any Lender is a party; (vii) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (viii) to any other Person if such information is general portfolio information that does not identify the Loan Parties, (ix) to the ABL Agent, subject to the confidentiality provisions of the ABL Credit Agreement, or (x) with the consent of the Administrative Borrower. In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to any Agent or any Lender in connection with the administration of this Agreement, the other Loan Documents and the Commitments. Each of the Administrative Agent and the Lenders acknowledges that (A) such information may include material non-public information concerning a Loan Party or Subsidiary; (B) it has developed compliance procedures regarding the use of material non-public information; and (C) it will handle such material non-public information in accordance with applicable Laws, including federal and state securities laws.

Section 12.20. Public Disclosure. Each Loan Party agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure using the name of an Agent, any Lender or any of their respective Affiliates or referring to this Agreement or any other Loan Document without the prior written consent of such Agent or such Lender, except to the extent that such Loan Party or such Affiliate is required to do so under applicable law (in which event, such Loan Party or such Affiliate will consult with such Agent or such Lender before issuing such press release or other public disclosure). Each Loan Party hereby authorizes each Agent and each Lender, after consultation with the Borrowers, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the financial arrangements entered into among the parties hereto, as such Agent or such Lender shall deem appropriate, including on a home page or similar place for dissemination of information on the Internet or worldwide web, or in announcements commonly known as tombstones, in such trade publications, business journals, newspapers of general circulation and to such selected parties as such Agent or such Lender shall deem appropriate.

Section 12.21. Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 12.22. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Borrowers, which information includes the name and address of each such entity and other information that will allow such Lender to identify the entities composing the Borrowers in accordance with the USA PATRIOT Act. Each Loan Party agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any Lender may reasonably require from time to time in order to enable such Lender to comply with the USA PATRIOT Act.

Section 12.23. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
- (c) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWERS:

BLACK RIFLE COFFEE COMPANY LLC
GOOD BEANS LLC

By: /s/ Robert Lee

Name: Robert Lee

Title: Vice President, Finance

PARENT:

AUTHENTIC BRANDS LLC

By: /s/ Robert Lee

Name: Robert Lee

Title: Vice President, Finance

Signature Page to Financing Agreement

GUARANTORS:

1144 SLC LLC
621 MANCHESTER LLC
BRCC COPPERFIELD LLC
BRCC GC LLC
BRCC OPERATING COMPANY LLC
FREE RANGE AMERICAN MEDIA COMPANY LLC
GROUNDS AND HOUNDS COFFEE COMPANY LLC
INDEPENDENT COFFEE SOLUTIONS LLC
SIGNAL MOUNTAIN MEDIA WORKS LLC
SPENCER 355 LLC

By: /s/ Robert Lee

Name: Robert Lee

Title: Vice President, Finance

Signature Page to Financing Agreement

COLLATERAL AGENT AND ADMINISTRATIVE AGENT:

BLUE TORCH FINANCE LLC

By: /s/ Kevin Genda

Name: Kevin Genda

Title: Authorized Signatory

[Signature Page – Financing Agreement]

LENDERS:

BLUE TORCH CREDIT OPPORTUNITIES SBAF FUND LP

By: Blue Torch Credit Opportunities SBAF GP LLC, its General Partner
By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

BLUE TORCH CREDIT OPPORTUNITIES FUND III LP

By: Blue Torch Credit Opportunities GP III LLC, its general partner
By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

BLUE TORCH CREDIT OPPORTUNITIES UNLEVERED FUND III LP

By: Blue Torch Credit Opportunities GP III LLC, its general partner
By: KPG BTC Management LLC, its managing member

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

[Signature Page – Financing Agreement]

BTC HOLDINGS SBAF FUND LLC

By: Blue Torch Credit Opportunities SBAF Fund LP, its sole member
By: Blue Torch Credit Opportunities SBAF GP LLC, its general partner
By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

BTC HOLDINGS KRS FUND LLC

By: Blue Torch Credit Opportunities KRS Fund LP, its sole member
By: Blue Torch Credit Opportunities KRS GP LLC, its general partner
By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

BTC HOLDINGS FUND III LLC

By: Blue Torch Credit Opportunities Fund III LP, its sole member
By: Blue Torch Credit Opportunities GP III LLC, its general partner
By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

[Signature Page – Financing Agreement]

BTC HOLDINGS FUND III-B LLC

By: Blue Torch Credit Opportunities Fund III LP, its sole member
By: Blue Torch Credit Opportunities GP III LLC, its general partner
By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

[Signature Page – Financing Agreement]
