

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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FILER

Purple Innovation, Inc.

CIK: [1643953](#) | IRS No.: **474078206** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **10-Q** | Act: **34** | File No.: **001-37523** | Film No.: **231155070**
SIC: **2510** Household furniture

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2023

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission File Number: 001-37523



PURPLE INNOVATION, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

47-4078206

(I.R.S. Employer
Identification No.)

4100 NORTH CHAPEL RIDGE ROAD SUITE 200
LEHI, UTAH

(Address of principal executive offices)

84043

(Zip Code)

Registrant's telephone number, including area code: (801) 756-2600

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, par value \$0.0001 per share	PRPL	The NASDAQ Stock Market LLC

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

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

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

Large accelerated filer ☐

Accelerated filer

☒

Non-accelerated filer ☐

Smaller reporting company ☒

Emerging growth company ☐

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

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

As of August 8, 2023, 105,322,607 shares of the registrant's Class A common stock, \$0.0001 par value per share, and 428,280 shares of the registrant's Class B common stock, \$0.0001 par value per share, were outstanding.

PURPLE INNOVATION, INC.
QUARTERLY REPORT ON FORM 10-Q
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In this Quarterly Report on Form 10-Q, references to “dollars” and “\$” are to United States (“U.S.”) dollars.

We have several trademarks registered with the U.S. Patent and Trademark Office (“USPTO”), including EquaPressure[®], WonderGel[®] and EquaGel[®] (for cushions), and Purple[®], No Pressure[®], Hyper-Elastic Polymer[®], Somnigel[®], Gel Matrix[®], Matrix[®], Gelee[®], Ascent[®], Softstretch[®], Purple Powerbase[®], Sleep Genius[®], Firm and Soft[®], Intellipillow[®], and Intellibed[®] (for plasticized elastomeric gel and certain types of products including mattresses, seat cushions, bed linen, mattress foundation and others). Additional registered trademarks include, but are not limited to, Purple Grid[®], Reinventing Comfort[®], Comfort Reinvented[®], TwinCloud[®], Purple Cloud[®], Purple Pillow[®], The Purple Mattress[®], Purple Hybrid[®], Purple Hybrid Premier[®], The Purple Mattress[®], The Purple Plus[®], Gelflex[®] and registration of the color *purple* as a trademark (for mattresses, pillows, and seat cushions). Applications are pending

for registration of additional trademarks and some of these listed trademarks for additional classes of goods both in the U.S. and internationally. Our Purple, No Pressure and Hyper-Elastic Polymer trademarks are also registered and have applications pending for various classes of goods in numerous foreign jurisdictions, some of which include Australia, Canada, China, Europe, United Kingdom, Japan and Korea. Certain international trademark applications previously resided with EdiZONE, LLC, which is an entity owned by our founders, and were licensed to Purple LLC and we have taken the necessary steps to have those trademarks assigned to Purple LLC upon registration.

We also have a number of common law trademarks, including Sleep Purple, Live Better™, New Day™, Restore™, RestorePlus™, RestorePremier™, Rejuvenate™, RejuvenatePlus™, RejuvenatePremier™, Perfectstay™, TempBalance™, Success Happens Overnight™, Overnight Success™, Harmony™, Purple Harmony Pillow™, Harmony Pillow™, Purple +™, Purple Plus™, Find Comfort™, Dreams On Dreams™, Reinventing Sleep™, Gelflex Grid™, Gelflex Grid Plus™, Purple Ascent™, Purple Squishy™, Purple Powerbase Premier™, Purple Powerbase Plus™, Purple Glove™, Eidertech™, Mattress Max™, WonderGel Original™, WonderGel Extreme™, DoubleGel™, DoubleGel Plus™, DoubleGel Ultra™, Roll n' Go™, Fold N' Go™, Purple Bed™, Purple Top™, Purple Pillow™, Portable Purple™, Everywhere Purple™, Simply Purple™, Lite Purple™, Royal Purple™, Double Purple™, Deep Purple™, Ultimate Purple™, Purple Back™, EquaGel Straight Comfort™, EquaGel General™, EquaGel Protector™, and EquaGel Adjustable™.

Many of the common law marks have registrations pending with the USPTO and other international jurisdictions. Solely for convenience, we refer to our trademarks in this Quarterly Report without the ™ or ® symbol, but such references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights to our trademarks.

In addition, we maintain copyrights, many of which are registered, to past and present versions of purple.com, onpurple.com, equapressure.com, wondergel.com, marketing content, blogs, logos, graphics, videos and other marketing and promotional materials promoting our products.

We protect and enforce our intellectual property rights, including through litigation as necessary.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

PURPLE INNOVATION, INC.
Condensed Consolidated Balance Sheets
(unaudited – in thousands, except for par value)

	June 30, 2023	December 31, 2022
Assets		
Current assets:		
Cash, cash equivalents and restricted cash	\$ 26,949	\$ 41,754
Accounts receivable, net	22,769	34,566
Inventories, net	78,402	73,197
Prepaid expenses	5,669	7,821
Other current assets	3,881	4,117
Total current assets	137,670	161,455
Property and equipment, net	131,493	136,673
Operating lease right-of-use assets	99,858	102,541
Goodwill	5,021	4,897
Intangible assets, net	23,688	26,221

Other long-term assets	2,958	1,546
Total assets	<u>\$ 400,688</u>	<u>\$ 433,333</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 48,742	\$ 46,441
Accrued sales returns	4,197	5,107
Accrued compensation	4,190	6,691
Customer prepayments	5,477	4,452
Accrued sales and use tax	1,674	2,978
Accrued rebates and allowances	5,827	9,804
Operating lease obligations – current portion	14,390	13,708
Other current liabilities	<u>7,359</u>	<u>8,130</u>
Total current liabilities	91,856	97,311
Debt	—	23,657
Operating lease obligations, net of current portion	113,549	115,599
Other long-term liabilities, net of current portion	<u>17,717</u>	<u>17,876</u>
Total liabilities	223,122	254,443
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Class A common stock; \$0.0001 par value, 210,000 shares authorized; 105,323 issued and outstanding at June 30, 2023 and 91,380 issued and outstanding at December 31, 2022	11	9
Class B common stock; \$0.0001 par value, 90,000 shares authorized; 428 issued and outstanding at June 30, 2023 and 448 issued and outstanding at December 31, 2022	—	—
Additional paid-in capital	589,145	529,466
Accumulated deficit	<u>(412,323)</u>	<u>(351,514)</u>
Total stockholders' equity attributable to Purple Innovation, Inc.	176,833	177,961
Noncontrolling interest	<u>733</u>	<u>929</u>
Total stockholders' equity	<u>177,566</u>	<u>178,890</u>
Total liabilities and stockholders' equity	<u>\$ 400,688</u>	<u>\$ 433,333</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

PURPLE INNOVATION, INC.
Condensed Consolidated Statements of Operations
(unaudited – in thousands, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenues, net	\$ 120,872	\$ 144,109	\$ 230,244	\$ 287,288
Cost of revenues	82,408	95,297	148,557	186,850
Gross profit	38,464	48,812	81,687	100,438
Operating expenses:				
Marketing and sales	46,379	40,373	84,552	90,332
General and administrative	26,437	18,779	50,104	36,667
Research and development	<u>2,925</u>	<u>1,748</u>	<u>6,297</u>	<u>3,891</u>
Total operating expenses	75,741	60,900	140,953	130,890
Operating loss	<u>(37,277)</u>	<u>(12,088)</u>	<u>(59,266)</u>	<u>(30,452)</u>

Other income (expense):				
Interest expense	(352)	(707)	(554)	(1,730)
Other income (expense), net	37	(136)	110	(119)
Change in fair value – warrant liabilities	—	346	—	4,274
Loss on extinguishment of debt	—	—	(1,217)	—
Total other income (expense), net	(315)	(497)	(1,661)	2,425
Net loss before income taxes	(37,592)	(12,585)	(60,927)	(28,027)
Income tax benefit (expense)	(72)	4,175	(144)	5,986
Net loss	(37,664)	(8,410)	(61,071)	(22,041)
Net loss attributable to noncontrolling interest	(155)	(70)	(262)	(199)
Net loss attributable to Purple Innovation, Inc.	<u>\$ (37,509)</u>	<u>\$ (8,340)</u>	<u>\$ (60,809)</u>	<u>\$ (21,842)</u>
Net loss per share:				
Basic	<u>\$ (0.36)</u>	<u>\$ (0.10)</u>	<u>\$ (0.60)</u>	<u>\$ (0.29)</u>
Diluted	<u>\$ (0.36)</u>	<u>\$ (0.10)</u>	<u>\$ (0.60)</u>	<u>\$ (0.29)</u>
Weighted average common shares outstanding:				
Basic	<u>105,079</u>	<u>82,703</u>	<u>101,760</u>	<u>74,924</u>
Diluted	<u>105,079</u>	<u>83,151</u>	<u>101,760</u>	<u>75,372</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

PURPLE INNOVATION, INC.
Condensed Consolidated Statements of Stockholders' Equity
(unaudited – in thousands)

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity	Noncontrolling Interest	Total Equity
	Shares	Par Value	Shares	Par Value					
Balance - December 31, 2022	91,380	\$ 9	448	\$ —	\$ 529,466	\$ (351,514)	\$ 177,961	\$ 929	\$ 178,890
Net loss	—	—	—	—	—	(23,300)	(23,300)	(107)	(23,407)
Stock-based compensation	—	—	—	—	1,192	—	1,192	—	1,192
Issuance of stock under equity compensation plans	265	—	—	—	—	—	—	—	—
Issuance of stock upon underwritten offering, net of costs	13,400	2	—	—	57,198	—	57,200	—	57,200
Impact of transactions affecting NCI	—	—	—	—	(103)	—	(103)	103	—
Balance – March 31, 2023	<u>105,045</u>	<u>\$ 11</u>	<u>448</u>	<u>\$ —</u>	<u>\$ 587,753</u>	<u>\$ (374,814)</u>	<u>\$ 212,950</u>	<u>\$ 925</u>	<u>\$ 213,875</u>
Net loss	—	—	—	—	—	(37,509)	(37,509)	(155)	(37,664)
Stock-based compensation	—	—	—	—	1,661	—	1,661	—	1,661
Exchange of stock	20	—	(20)	—	—	—	—	—	—
Proportional									
Representation Preferred	—	—	—	—	(105)	—	(105)	—	(105)
Linked Stock redemption fee	—	—	—	—	—	—	—	—	—

Additional costs associated with underwritten public stock offering	—	—	—	—	(201)	—	(201)	—	(201)
Issuance of stock under equity compensation plans	258	—	—	—	—	—	—	—	—
Impact of transactions affecting NCI	—	—	—	—	37	—	37	(37)	—
Balance – June 30, 2023	105,323	\$ 11	428	\$ —	\$ 589,145	\$ (412,323)	\$ 176,833	\$ 733	\$ 177,566

	Class A Common Stock		Class B Common Stock		Additional Paid-in	Accumulated	Total Stockholders'	Noncontrolling	Total
	Shares	Par Value	Shares	Par Value	Capital	Deficit	Equity	Interest	Equity
Balance - December 31, 2021	66,493	\$ 7	448	\$ —	\$ 407,591	\$ (261,825)	\$ 145,773	\$ 768	\$ 146,541
Net loss	—	—	—	—	—	(13,502)	(13,502)	(129)	(13,631)
Stock-based compensation	—	—	—	—	542	—	542	—	542
Exercise of stock options	20	—	—	—	166	—	166	—	166
Issuance of stock under equity compensation plans	25	—	—	—	—	—	—	—	—
Issuance of stock upon underwritten public offering, net of costs	16,100	1	—	—	92,894	—	92,895	—	92,895
Accrued distributions	—	—	—	—	(228)	—	(228)	—	(228)
Impact of transactions affecting NCI	—	—	—	—	(141)	—	(141)	141	—
Balance – March 31, 2022	82,638	\$ 8	448	\$ —	\$ 500,824	\$ (275,327)	\$ 225,505	\$ 780	\$ 226,285
Net loss	—	—	—	—	—	(8,340)	(8,340)	(70)	(8,410)
Stock-based compensation	—	—	—	—	1,275	—	1,275	—	1,275
Issuance of common stock under equity compensation plans	126	—	—	—	—	—	—	—	—
Additional costs associated with underwritten public stock offering	—	—	—	—	(29)	—	(29)	—	(29)
Impact of transactions affecting NCI	—	—	—	—	(73)	—	(73)	73	—
Balance – June 30, 2022	82,764	\$ 8	448	\$ —	\$ 501,997	\$ (283,667)	\$ 218,338	\$ 783	\$ 219,121

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

(unaudited – in thousands)

	Six Months Ended June 30,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (61,071)	\$ (22,041)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	12,890	7,583
Non-cash interest	686	360
Loss on extinguishment of debt	1,217	—
Change in fair value – warrant liabilities	—	(4,274)
Stock-based compensation	2,853	1,817
Deferred income taxes	—	(6,161)
Changes in operating assets and liabilities:		
Accounts receivable	11,467	(6,148)
Inventories, net	(5,061)	13,804
Prepaid expenses and other assets	2,952	3,481
Operating leases, net	1,315	4,178
Accounts payable	3,304	(37,027)
Accrued sales returns	(910)	(2,005)
Accrued compensation	(2,709)	354
Customer prepayments	1,025	(5,722)
Accrued rebates and allowances	(3,977)	(2,854)
Other accrued liabilities	(2,034)	1,851
Net cash used in operating activities	<u>(38,053)</u>	<u>(52,804)</u>
Cash flows from investing activities:		
Purchase of property and equipment	(5,443)	(24,233)
Investment in intangible assets	(380)	(1,822)
Net cash used in investing activities	<u>(5,823)</u>	<u>(26,055)</u>
Cash flows from financing activities:		
Payments on term loan	(24,656)	(2,531)
Payments on revolving line of credit	—	(55,000)
Payments for debt issuance costs	(2,898)	(1,242)
Proceeds from stock offering	60,300	98,210
Payments for public offering costs	(3,301)	(5,344)
Proportional Representation Preferred Linked Stock redemption fee	(105)	—
Tax receivable agreement payments	(269)	(5,847)
Proceeds from exercise of stock options	—	166
Net cash provided by financing activities	<u>29,071</u>	<u>28,412</u>
Net decrease in cash, cash equivalents and restricted cash	(14,805)	(50,447)
Cash, cash equivalents and restricted cash, beginning of the year	41,754	91,616
Cash, cash equivalents and restricted cash, end of the period	<u>\$ 26,949</u>	<u>\$ 41,169</u>
Supplemental disclosures of cash flow information:		
Cash paid during the period for interest, net of amounts capitalized	<u>\$ (226)</u>	<u>\$ 1,345</u>
Cash paid during the period for income taxes	<u>\$ 281</u>	<u>\$ 219</u>
Supplemental schedule of non-cash investing and financing activities:		
Property and equipment included in accounts payable	<u>\$ 3,209</u>	<u>\$ 3,648</u>
Accrued distributions	<u>\$ —</u>	<u>\$ 228</u>

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
(unaudited)

1. Organization

Purple Innovation, Inc.'s mission is to help people feel and live better through innovative comfort solutions.

Purple Innovation, Inc. collectively with its subsidiary (the "Company" or "Purple Inc.") is an omni-channel Company that began as a digitally-native vertical brand founded on comfort product innovation with premium offerings. The Company designs and manufactures a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, bases, sheets, and other products. The Company markets and sells its products through its e-commerce online channels, retail brick-and-mortar wholesale partners, Purple owned retail showrooms, and third-party online retailers.

The Company was incorporated in Delaware on May 19, 2015 as a special purpose acquisition company under the name of Global Partnership Acquisition Corp ("GPAC"). On February 2, 2018, the Company consummated a transaction structured similar to a reverse recapitalization (the "Business Combination") pursuant to which the Company acquired a portion of the equity of Purple Innovation, LLC ("Purple LLC"). At the closing of the Business Combination (the "Closing"), the Company became the sole managing member of Purple LLC, and GPAC was renamed Purple Innovation, Inc.

As the sole managing member of Purple LLC, Purple Inc. through its officers and directors is responsible for all operational and administrative decision making and control of the day-to-day business affairs of Purple LLC without the approval of any other member.

On August 31, 2022, the Company acquired all the issued and outstanding stock of Advanced Comfort Technologies, Inc., dba Intellibed ("Intellibed") pursuant to an Agreement and Plan of Merger (the "Merger Agreement"), in which Gelato Merger Sub, Inc., a wholly owned subsidiary of Purple Inc., merged with and into Intellibed, with Intellibed continuing as a wholly owned subsidiary of Purple Inc. On October 3, 2022, Purple Inc. contributed 100% of the membership interest in Intellibed to Purple LLC and Intellibed became a wholly owned subsidiary of Purple LLC. For further discussion see Note 4 — *Acquisition*.

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The condensed consolidated financial statements include the accounts of Purple Inc., its controlled subsidiary Purple LLC, and Intellibed, Purple LLC's wholly owned subsidiary, from the date of acquisition. All intercompany balances and transactions have been eliminated in consolidation. As of June 30, 2023, Purple Inc. held 99.6% of the common units of Purple LLC and Purple LLC Class B Unit holders held 0.4% of the common units in Purple LLC.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting and reflect the financial position, results of operations and cash flows of the Company. Certain information and note disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. As such, these unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022. The unaudited condensed consolidated financial statements were prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, reflect all adjustments (all of which were considered of normal recurring nature) considered necessary to present fairly the Company's financial results. The results of the three and six months ended June 30, 2023 are not necessarily indicative of the results to be expected for the fiscal year ending December 31, 2023 or for any other interim period or other future year.

Variable Interest Entities

Purple LLC is a variable interest entity. The Company determined that it is the primary beneficiary of Purple LLC as it is the sole managing member and has the power to direct the activities most significant to Purple LLC's economic performance as well as the obligation to absorb losses and receive benefits that are potentially significant. At June 30, 2023, Purple Inc. had a 99.6% economic interest in Purple LLC and consolidated 100% of Purple LLC's assets, liabilities and results of operations in the Company's unaudited condensed consolidated financial statements contained herein. The holders of Purple LLC Class B Units (the "Class B Units") held 0.4% of the economic interest in Purple LLC as of June 30, 2023. For further discussion see Note 16 — *Stockholders' Equity*.

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements in conformity with GAAP requires the Company to establish accounting policies and to make estimates and judgments that affect the reported amounts of assets and liabilities and disclose contingent assets and liabilities as of the date of the unaudited condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. The Company bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. The Company regularly makes significant estimates and assumptions including, but not limited to, estimates that affect revenue recognition, accounts receivable and allowance for credit losses, valuation of inventories, sales returns, warranty returns, fair value of assets acquired and liabilities assumed in a business combination, warrant liabilities, stock based compensation, the recognition and measurement of loss contingencies, estimates of current and deferred income taxes, deferred income tax valuation allowances, and amounts associated with the Company's tax receivable agreement with InnoHold, LLC ("InnoHold"). Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. Actual results could differ materially from those estimates.

PURPLE INNOVATION, INC. Notes to Condensed Consolidated Financial Statements (unaudited)

Recent Accounting Pronouncements

Measurement of Credit Losses

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"), which was further updated and clarified by the FASB through issuance of additional related ASUs. This guidance replaces the existing incurred loss impairment guidance and establishes a single allowance framework for financial assets carried at amortized cost based on expected credit losses. The estimate of expected credit losses requires the incorporation of historical information, current conditions, and reasonable and supportable forecasts. These updates are effective for public companies, excluding Smaller Reporting Companies ("SRC"), for annual periods beginning after December 15, 2019, including interim periods therein. The standard is effective for all other entities for annual periods beginning after December 15, 2022, including interim periods therein. The standard is effective for the Company's interim and annual financial periods beginning January 1, 2023. This standard was adopted utilizing a modified retrospective approach. The adoption of this standard on January 1, 2023 did not have a material impact on the Company's condensed consolidated financial statements and related disclosures.

3. Underwritten Offering of Class A Common Stock

In February 2023, the Company completed an underwritten offering of 13.4 million shares of Class A common stock at a price of \$4.50 per share. The underwriters did not exercise their over-allotment option. The aggregate net proceeds received by the Company from the offering, after deducting offering fees and expenses of \$3.3 million, totaled \$57.0 million.

4. Acquisition

On August 31, 2022, pursuant to the Merger Agreement, the Company acquired Intellibed, a premium sleep and health wellness company, offering gel-based mattresses scientifically designed for maximum back support, spinal alignment and pressure point relief. The addition of Intellibed increased product offerings to customers, expanded market opportunities, capitalized on synergies of the combined companies, and increased opportunities for innovation. In addition, the acquisition allowed the Company to consolidate ownership of its intellectual property licensed to Intellibed and more fully capitalize on growing demand for products with gel technologies.

The acquisition date fair value of the consideration transferred for Intellibed was \$28.3 million, which consisted of the following (in thousands):

Fair value of Class A common stock issued at closing	\$ 23,069
Fair value of Class A common stock held in escrow	1,467
Fair value of contingent consideration	1,471
Fair value of effective settlement of preexisting relationships	1,672
Transaction expenses paid on behalf of Intellibed	546
Due to seller	75
Fair value of total purchase consideration	<u>\$ 28,300</u>

The fair value of common stock issued at closing consisted of approximately 8.1 million shares of Class A common stock valued using the acquisition date closing price of \$2.86. The fair value of common stock held in escrow consisted of 0.5 million shares of Class A common stock valued using the acquisition date closing price of \$2.86. These shares are being held in escrow pending resolution of net working capital adjustments and certain indemnification matters, as described in the Merger Agreement.

Contingent consideration represents the fair value of 1.5 million shares of Class A common stock issuable to Intellibed security holders if the closing price of the Company's stock does not equal or exceed \$5.00 for at least ten trading days over any period of 30 consecutive trading days during the period beginning on the six-month anniversary of the closing date and ending on the 18-month anniversary of the closing date. The contingent shares were valued using a Monte-Carlo simulation model. Because the contingent consideration is payable with a fixed number of shares of the Company's Class A common stock, it is classified as equity and will not require remeasurement in subsequent periods.

The fair value of effective settlement of preexisting relationships includes \$1.4 million related to the fair value of a preexisting legal matter with Intellibed that was effectively settled on the acquisition date and \$0.3 million related to the fair value of a preexisting royalty liability owed by Intellibed to the Company that was also effectively settled on the acquisition date. As a result of effectively settling the preexisting legal matter with Intellibed, the Company recorded a gain of \$1.4 million as other income (expense), net in the consolidated statement of operations during the third quarter of 2022. As a result of effectively settling the preexisting royalty liability, the Company and Intellibed recorded a corresponding receivable and payable, respectively, for the same \$0.3 million amount that was eliminated in consolidation.

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The Company recorded the acquisition based on the fair value of the consideration transferred and then allocated the purchase price to the identifiable assets acquired and liabilities assumed based on their respective preliminary estimated fair values as of the acquisition date. Determining the fair value of assets acquired and liabilities assumed required management to use significant judgment and estimates including the selection of valuation methodologies, estimates of future revenues and cash flows, discount rates, and asset lives, among other items. While the Company used its best estimates and assumptions as a part of the purchase price allocation process to accurately value the assets acquired, including intangible assets, and the liabilities assumed at the acquisition date, the Company's estimates are inherently uncertain and subject to refinement. Consequently, during the measurement period, which could be up to one year from the acquisition date, the Company may record adjustments to the fair values of the assets acquired and the liabilities assumed, with a corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the values of assets acquired or the liabilities assumed, whichever comes first, any subsequent adjustments will be reflected in the Company's consolidated statement of operations.

During the second quarter of 2023, the Company updated the preliminary valuation of the fair value of tangible and intangible assets acquired and liabilities assumed, which required a measurement period adjustment of \$0.1 million to increase goodwill. Based upon the purchase price allocation, the following table summarizes the preliminary fair value of the assets acquired and liabilities assumed in the acquisition as of the date of acquisition, the measurement period adjustments and the as adjusted as of June 30, 2023 (in thousands):

Net tangible assets (liabilities):	At date of acquisition	Measurement period adjustments	As adjusted June 30, 2023
Cash, cash equivalents and restricted cash	\$ 4,194	\$ 12	\$ 4,206
Accounts receivable	5,051	(357)	4,694
Inventory	4,182	(575)	3,607
Other current assets	126	200	326
Property and equipment	7,000	—	7,000
Operating lease right-of-use assets	5,491	—	5,491
Other long-term assets	68	—	68
Accounts payable	(2,285)	(460)	(2,745)
Other current liabilities	(2,818)	545	(2,273)
Operating lease obligations	(4,373)	—	(4,373)
Deferred tax liabilities	(3,868)	(374)	(4,242)
Net tangible assets (liabilities)	12,768	(1,009)	11,759
Goodwill	6,441	(1,420)	5,021
Customer relationships	8,476	2,400	10,876
Developed technology	615	29	644
Net assets acquired and liabilities assumed	\$ 28,300	\$ —	\$ 28,300

Due to the close proximity of the acquisition date to the Company's first reporting date after the transaction, the Company recorded the assets acquired and liabilities assumed at preliminary estimates of fair value. As a result, the Company had not finalized the determination of the working capital adjustments and the fair values allocated to various assets and liabilities, income tax provision, intangible assets and the residual amount allocated to goodwill. While the final determination of working capital adjustments was still pending at June 30, 2023, the table above reflects measurement period adjustments made to various assets acquired and liabilities assumed based on updated information, and revisions to reflect the final fair value analysis associated with the two intangible assets. The corresponding offsets for these measurement period adjustments was goodwill.

The Company believes the amount of goodwill resulting from the purchase price allocation is primarily attributable to expected synergies from the assembled workforce, an increase in development capabilities, increased offerings to customers, expanded market opportunities, and enhanced opportunities for growth and innovation. Goodwill is not being amortized but instead is tested for impairment at least annually or more frequently if certain indicators of impairment are present. In the event that goodwill becomes impaired, the Company will record an expense for the amount impaired during the quarter in which the determination is made. The goodwill recorded is not deductible for income tax purposes.

The two identified definite lived intangible assets, comprised of customer relationships and developed technology, are being amortized over their estimated useful lives of ten and two years, respectively. The customer relationships intangible asset represents the estimated fair value of the underlying relationships with Intellibed customers, valued utilizing the multi-period excess earnings method. The developed technology intangible represents the fair value of Intellibed industry-specific cloud and mobile software and related technologies, valued using the cost to recreate method.

The cash, cash equivalents and restricted cash balance acquired included \$1.7 million of cash deposited by Intellibed in a separate account pursuant to an escrow agreement with the Company that will end on August 31, 2023. The purpose of the escrow cash amount was to cover Intellibed's estimated state income tax liabilities, sales tax liabilities and related filing expenses that existed prior to the acquisition date. If the actual liabilities are less than estimated, any excess cash will be returned to the previous shareholders of Intellibed. If payments for these items exceed the escrow balance, the Company will be required to pay the excess. The Company recorded the \$1.7 million of cash on August 31, 2022 as an acquired restricted cash balance that is included in cash, cash equivalents and restricted cash in the condensed consolidated balance sheets as of June 30, 2023 and December 31, 2022. The Company also recorded on August 31, 2022, an assumed liability totaling \$1.3 million for the sales and use tax and state and local income tax liabilities exposure that existed at the date of acquisition and was reflected in other current liabilities in the condensed consolidated balance sheet.

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5. Fair Value Measurements

The Company uses the fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, essentially an exit price, based on the highest and best use of the asset or liability. The levels of the fair value hierarchy are:

Level 1—Quoted market prices in active markets for identical assets or liabilities;

Level 2—Significant other observable inputs (i.e., quoted prices for similar items in active markets, quoted prices for identical or similar items in markets that are not active, inputs other than quoted prices that are observable, such as interest rate and yield curves, and market-corroborated inputs); and

Level 3—Unobservable inputs in which there is little or no market data, which require the reporting unit to develop its own assumptions.

The classification of fair value measurements within the established three-level hierarchy is based upon the lowest level of input that is significant to the measurements. Financial instruments, although not recorded at fair value on a recurring basis include cash and cash equivalents, receivables, accounts payable and the Company's debt obligations. The carrying amounts of cash and cash equivalents, receivables, accounts payable and accrued expenses approximate fair value because of the short-term nature of these accounts. The fair value of the Company's debt instruments is estimated to be face value based on the contractual terms of the debt arrangements and market-based expectations.

The sponsor warrant liabilities (see Note 12 — *Warrant Liabilities* for more information) are Level 3 instruments and use internal models to estimate fair value using certain significant unobservable inputs which required determination of relevant inputs and assumptions. Accordingly, changes in these unobservable inputs may have had a significant impact on fair value. Such inputs included risk free interest rate, expected average life, expected dividend yield, and expected volatility. These Level 3 liabilities generally decreased (increased) in value based upon an increase (decrease) in risk free interest rate and expected dividend yield. Conversely, the fair value of these Level 3 liabilities generally increased (decreased) in value if the expected average life or expected volatility were to increase (decrease). Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement.

There were no sponsor warrants outstanding on June 30, 2023 and the 1.9 million sponsor warrants outstanding on December 31, 2022 had a negligible fair value. As a result, activity for the six months ended June 30, 2023 was de minimis. The following table summarizes the Company's total Level 3 liability activity for the six months ended June 30, 2022.

(In thousands)	Sponsor Warrants
Fair value as of December 31, 2021	\$ 4,343
Fair value of warrants exercised	—
Change in valuation inputs ⁽¹⁾	(4,274)
Fair value as of June 30, 2022	<u>\$ 69</u>

(1) Changes in valuation inputs are recognized as the change in fair value – warrant liabilities in the condensed consolidated statement of operations.

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6. Revenue from Contracts with Customers

The Company markets and sells its products through e-commerce online channels, retail brick-and-mortar wholesale partners, Purple owned retail showrooms, and third-party online retailers. Revenue is recognized when the Company satisfies its performance obligations under the contract which involves transferring the promised products to the customer, subject to shipping terms.

Disaggregated Revenue

The Company classifies revenue into two sales categories: direct-to-consumer (“DTC”) and wholesale. The DTC category is comprised of the Company’s e-commerce channel that sells directly to consumers who purchase online and through our contact center, and the Purple owned retail showrooms channel that sells directly to consumers who purchase at a showroom location. The wholesale channel includes all product sales to our wholesale partners where consumers make purchases at their retail locations or through their online channels. The Company classifies products into two major types: sleep products and other. Sleep products include mattresses, platforms, adjustable bases, mattress protectors, pillows and sheets. Other products include cushions and various other products.

The following tables present the Company’s net revenue disaggregated by sales category and product type (in thousands):

Sales Category	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
DTC	\$ 68,056	\$ 81,628	\$ 134,566	\$ 167,164
Wholesale	52,816	62,481	95,678	120,124
Revenues, net	<u>\$ 120,872</u>	<u>\$ 144,109</u>	<u>\$ 230,244</u>	<u>\$ 287,288</u>

Product Type	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Sleep products	\$ 108,296	\$ 131,738	\$ 207,131	\$ 260,704
Other	12,576	12,371	23,113	26,584
Revenues, net	<u>\$ 120,872</u>	<u>\$ 144,109</u>	<u>\$ 230,244</u>	<u>\$ 287,288</u>

Contract Balances

Payment for sale of products through the e-commerce online channel, third-party online retailers, Purple owned retail showrooms and contact center is collected at point of sale in advance of shipping the products. Amounts received for unshipped products are recorded as customer prepayments. Customer prepayments totaled \$5.5 million and \$4.5 million at June 30, 2023 and December 31, 2022, respectively. During the six months ended June 30, 2023 and 2022, the Company recognized all revenue that was deferred in customer prepayments at December 31, 2023 and 2022, respectively.

7. Inventories, Net

Inventories, net consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Raw materials	\$ 27,496	\$ 31,803
Work-in-process	6,834	2,261
Finished goods	45,596	40,476
Inventory obsolescence reserve	(1,524)	(1,343)
Inventories, net	<u>\$ 78,402</u>	<u>\$ 73,197</u>

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8. Property and Equipment, Net

Property and equipment, net consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Equipment	\$ 71,409	\$ 66,533
Equipment in progress	15,953	19,099
Leasehold improvements	57,969	56,114
Furniture and fixtures	26,939	26,290
Office equipment	3,884	4,393
Total property and equipment	176,154	172,429
Accumulated depreciation	(44,661)	(35,756)
Property and equipment, net	<u>\$ 131,493</u>	<u>\$ 136,673</u>

Equipment in progress reflects equipment, primarily related to mattress manufacturing, which is being constructed and was not in service at June 30, 2023 or December 31, 2022. Interest capitalized on borrowings during the active construction period of major capital projects totaled \$0.1 million and \$0.5 million during the three and six months ended June 30, 2023, respectively and totaled \$0.2 million and \$0.4 million during the three and six months ended June 30, 2022, respectively. Depreciation expense was \$4.9 million and \$9.7 million during the three and six months ended June 30, 2023, respectively, and totaled \$3.6 million and \$7.1 million during the three and six months ended June 30, 2022, respectively.

9. Leases

The Company leases its manufacturing and distribution facilities, corporate offices, Purple owned retail showrooms and certain equipment under non-cancelable operating leases with various expiration dates through 2036. The Company's office and manufacturing leases provide for initial lease terms up to 16 years, while Purple owned retail showrooms have initial lease terms of up to ten years. Certain leases may contain options to extend the term of the original lease. The exercise of lease renewal options is at the Company's discretion. Any lease renewal options are included in the lease term if exercise is reasonably certain at lease commencement. The Company also leases vehicles and other equipment under both operating and finance leases with initial lease terms of three to five years. The right-of-use asset balances for finance leases, which totaled \$0.9 million and \$1.0 million at June 30, 2023 and December 31, 2022, respectively, were included with operating lease right-of-use assets on the condensed consolidated balance sheets.

The following table presents the Company's lease costs (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Operating	\$ 4,620	\$ 3,690	\$ 9,505	\$ 6,838
Variable	1,204	409	2,177	1,123
Short-term	—	—	—	11
Total lease costs	<u>\$ 5,824</u>	<u>\$ 4,099</u>	<u>\$ 11,682</u>	<u>\$ 7,972</u>

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The table below reconciles the undiscounted cash flows for each of the first five years and total remaining years to the operating lease liabilities recorded on the condensed consolidated balance sheet at June 30, 2023 (in thousands):

2023 (excluding the six months ended June 30, 2023) ^(a)	\$ 9,760
2024	20,779
2025	20,378
2026	19,173
2027	19,384
Thereafter	71,049
Total operating lease payments	160,523
Less – lease payments representing interest	(32,584)
Present value of operating lease payments	<u>\$ 127,939</u>

- (a) Amount consists of \$10.5 million of undiscounted cash flows offset by \$0.8 million of tenant improvement allowances which are expected to be fully utilized in fiscal 2023.

As of June 30, 2023 and December 31, 2022, the weighted-average remaining term of operating leases was 8.4 years and 8.8 years, respectively, and the weighted-average discount rate of operating leases was 5.56% and 5.51%, respectively.

The following table provides supplemental information related to the Company's condensed consolidated statement of cash flows for the six months ended June 30, 2023 and 2022 (in thousands):

	Six Months Ended	
	June 30,	
	2023	2022
Cash paid for amounts included in present value of operating lease liabilities ^(b)	\$ 6,691	\$ 3,425
Right-of-use assets obtained in exchange for operating lease liabilities	3,518	25,029

- (b) Operating cash flows paid for operating leases are included within the change in other assets and liabilities within the Condensed Consolidated Statement of Cash Flows offset by non-cash right-of-use asset amortization and lease liability accretion.

10. Other Current Liabilities

Other current liabilities consisted of the following (in thousands):

	June 30,	December
	2023	31,
		2022
Warranty accrual – current portion	\$ 4,624	\$ 4,985
Insurance financing	1,086	1,010
Accrued sales tax liability assumed in acquisition	398	753
Accrued property taxes	408	28
Tax receivable agreement liability – current portion	—	269
Other	843	1,085
Total other current liabilities	<u>\$ 7,359</u>	<u>\$ 8,130</u>

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11. Debt

Debt consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Term loan	\$ —	\$ 24,656
Less: unamortized debt issuance costs	—	(999)
Total debt	<u>\$ —</u>	<u>\$ 23,657</u>

Term Loan and Revolving Line of Credit

On September 3, 2020, Purple LLC entered into a financing arrangement with KeyBank National Association and a group of financial institutions (the “2020 Credit Agreement”). The 2020 Credit Agreement provided for a \$45.0 million term loan and a \$55.0 million revolving line of credit. The term loan was to be repaid in accordance with a five-year amortization schedule or prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. The revolving credit facility had a term of five years and carried the same interest provisions as the term debt. A commitment fee was due quarterly based on the applicable margin applied to the unused total revolving commitment. (See Note 21—*Subsequent Events* for information on the new asset-based lending arrangement entered into by the Company on August 7, 2023).

Pursuant to a Pledge and Security Agreement between Purple LLC, KeyBank and the Company (the “Security Agreement”), the 2020 Credit Agreement was secured by a perfected first-priority security interest in the assets of Purple LLC and the Company, including a security interest in all intellectual property. Also, the Company agreed to an unconditional guaranty of the payment of all obligations and liabilities of Purple LLC under the 2020 Credit Agreement. The Security Agreement contained a pledge, as security for the Company’s guaranty, of all its ownership interest in Purple LLC. The 2020 Credit Agreement also provided for standard events of default, such as for non-payment and failure to perform or observe covenants, and contained standard indemnifications benefitting the lenders.

The 2020 Credit Agreement included representations, warranties and certain covenants of Purple LLC and the Company. Under the 2020 Credit Agreement, Purple LLC was subject to several affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, subject to certain exceptions. In particular, Purple LLC was (i) subject to annual capital expenditure limits that can be adjusted based on the Company achieving certain net leverage ratio thresholds as provided in the 2020 Credit Agreement, (ii) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the 2020 Credit Agreement, and (iii) required to maintain minimum consolidated net leverage and fixed charge coverage ratio thresholds at certain measurement dates (as defined in the 2020 Credit Agreement). Purple LLC was also restricted from paying dividends or making other distributions or payments on its capital stock, subject to limited exceptions. If the Company or Purple LLC failed to perform their obligations under these and other covenants, or if any event of default had occurred, the revolving loan commitments under the 2020 Credit Agreement could have been terminated and any outstanding borrowings, together with accrued interest, could have been declared immediately due and payable.

The Company’s operating and financial results for the year ended December 31, 2021 did not satisfy the financial and performance covenants required under the 2020 Credit Agreement. On February 28, 2022, prior to the covenant compliance certification date, the Company entered into the first amendment of the 2020 Credit Agreement to avoid a breach of these covenants and potential default. Pursuant to this amendment, the Company incurred fees and expenses of \$0.8 million that were recorded as debt issuance costs in the condensed consolidated balance sheet and made a \$2.5 million payment on the term loan to cover the four quarterly principal payments due in 2022. The Company accounted for this amendment as a modification of existing debt in accordance with ASC 470 – *Debt*. This amendment contained a covenant waiver period such that the net leverage ratio and fixed charge coverage ratio were not tested for the fiscal quarters ended December 31, 2021, March 31, 2022 and June 30, 2022. Other modifications in the amendment included revised leverage ratio and fixed charge coverage definitions and thresholds, the addition of minimum liquidity requirements with mandatory prepayments of the revolving loan if cash exceeded \$25.0 million, new weekly and monthly reporting requirements, limits on the amount of capital expenditures, the addition of a lease incurrence test for opening additional showrooms, and additional negative covenants during a covenant amendment period that extends into 2023 until certain conditions are met. In addition, the interest rate on any outstanding borrowings under the 2020 Credit Agreement was changed from LIBOR with a floor of 0.5% plus an applicable margin

(historically at 3.0%) to an initial rate of SOFR with a floor of 0.5% plus an applicable margin of 4.75%, for a total rate of 5.25% as long as the applicable liquidity threshold is met. If the Company did not meet this threshold, the interest rate would have increased to SOFR with a floor of 0.5% plus 9.00%. Once the Company achieved a consolidated leverage ratio that was below 3.00 to 1.00, the interest rate would have been based on SOFR with a floor of 0.5% plus a 3.00% to 3.75% margin depending on the consolidated leverage ratio.

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On March 23, 2022, the Company entered into a second amendment to the 2020 Credit Agreement. This amendment modified the 2020 Credit Agreement to allow Coliseum Capital Management, LLC, on behalf of its funds, managed accounts and its investment affiliates (individually “CCM” and collectively “Coliseum”) to acquire 35% or more of the combined voting power of all equity interests of the Company entitled to vote for the election of members of the Company’s board of directors (“Board”) without constituting an event of default. Coliseum is considered a related party of the Company in that Adam Gray, a member of our board of directors, serves as a managing partner of Coliseum. Pursuant to the second amendment of the 2020 Credit Agreement, the Company incurred fees and expenses of \$0.4 million that were recorded as debt issuance costs in the condensed consolidated balance sheet. The Company accounted for this amendment as a modification of existing debt in accordance with ASC 470 – *Debt*. For further discussion see Note 15—*Related Party Transactions—Coliseum Capital Management, LLC*.

On May 13, 2022 and September 9, 2022, the Company entered into third and fourth amendments, respectively, to the 2020 Credit Agreement. These amendments modified the permitted leases schedule to reflect a change in showroom locations and a new lease for an innovation building. The amendments did not meet the criteria for a modification of existing debt and minimal costs were recorded as general and administrative expense in the condensed consolidated statement of operations.

On July 14, 2022, the Company received consent under the 2020 Credit Agreement that allowed the Company’s acquisition of Intellibed to constitute a permitted acquisition under the 2020 Credit Agreement. The Company incurred fees and expenses of \$0.3 million that were recorded as general and administrative expense in the condensed consolidated statement of operations.

In December 2022, the Company made a \$15.0 million prepayment against the outstanding term loan balance without payment of a premium or penalty.

On February 17, 2023, the Company entered into a fifth amendment to the 2020 Credit Agreement. As a condition of entering into the amendment, the Company repaid the \$24.7 million outstanding balance on the term loan plus accrued interest. The amendment provided that the maximum leverage ratio covenant would not be tested for the first and second quarters of 2023, revised the ratio to 4.50x for the third quarter of 2023, and revised the ratio to 3.00x for all quarters thereafter. In addition, the minimum fixed charge coverage ratio covenant was not to be tested for the first and second quarters of 2023, was revised to 1.50x for the third and fourth quarters of 2023, and was revised to 2.00x for all quarters thereafter. The amendment also revised the lease incurrence test, which allowed the Company to incur ten new showroom leases for stores that would open in 2023 and six new leases for stores that would open in 2024. Moreover, beginning in the fourth quarter of 2023, we would have been allowed to begin entering into new leases for stores that would open in 2024, subject to leverage ratio requirements. The leverage ratio was to be less than 2.50x to sign leases, with up to a maximum of six new leases per quarter, increasing to eight new leases per quarter if the leverage ratio is less than 2.00x. The amendment further provided certain minimum consolidated EBITDA covenants for the first and second quarters of 2023 based on total unrestricted cash and unused revolver availability. The amendment also modified the definition of consolidated EBITDA to allow for nonrecurring / one-time and non-cash expenses and certain other expenses that are cash capped. In addition, for purposes of the definition of consolidated EBITDA, annual non-recurring and unusual out-of-pocket legal expenses were capped at \$5.0 million for 2023 and \$2.0 million per year thereafter. Moreover, the amendment (i) reduced the amount available under the revolving line of credit to \$50.0 million, (ii) provided that the maturity date of the 2020 Credit Agreement would spring forward to June 30, 2024 if consolidated EBITDA was not greater than \$15.0 million for 2023, (iii) reduced limits on maximum growth capital expenditures to \$32.0 million for 2023 and \$35.0 million for 2024 and 2025, and (iv) revised the current minimum liquidity covenant of \$25.0 million to provide that it would increase to \$30.0 million for each three-month period following the applicable fiscal quarter if the leverage ratio was greater than 3.00x for any fiscal quarter ending on or after the third quarter of 2023. Pursuant to this amendment, the Company incurred fees and expenses of \$2.9 million that were recorded as debt issuance costs in the condensed consolidated balance sheet. The amendment was accounted for as an extinguishment of

debt and \$1.2 million of unamortized debt issuance costs related to the term loan were recorded as loss on extinguishment of debt in the condensed consolidated statement of operations.

On April 26, 2023, the Company received consent under the 2020 Credit Agreement that allowed the Company's redemption of Proportional Representation Preferred Linked Stock ("PRPLS") issued by the Company on February 24, 2023, in an aggregate amount not to exceed \$0.2 million as agreed by the Company in an April 19, 2023 Cooperation Agreement (the "Cooperation Agreement") entered into with Coliseum in connection with a complaint filed by Coliseum against the Company, and a waiver of any possible default related to entering into that Cooperation Agreement prior to receiving such consent. (See Note 15—*Related Party Transactions—Coliseum Capital Management, LLC* for information regarding the complaint previously filed by Coliseum, for information regarding events leading up to the Company's issuance of the PRPLS, and for information regarding terms of the Cooperation Agreement and redemption of the PRPLS.)

On May 10, 2023, the Company entered into a sixth amendment to the 2020 Credit Agreement. This amendment clarified an ambiguity identified in the first sentence of Section 7.07(d), as amended by the fifth amendment, which provided that Minimum Consolidated EBITDA as of each of March 31, 2023 and June 30, 2023 pertained to Consolidated EBITDA for each such fiscal quarter rather than Consolidated EBITDA for the trailing twelve-month period.

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Interest expense under the 2020 Credit Agreement totaled \$0.5 million and \$1.1 million for the three and six months ended June 30, 2023, respectively, and totaled \$0.9 million and \$2.0 million for the three and six months ended June 30, 2022, respectively.

12. Warrant Liabilities

The Company issued 12.8 million sponsor warrants pursuant to a private placement conducted simultaneously with its initial public offering. Each of these warrants entitled the registered holder to purchase one-half of one share of the Company's Class A common stock at a price of \$5.75 per half share (\$11.50 per full share), subject to adjustment pursuant to the terms of the warrant agreement. These sponsor warrants contained certain provisions that do not meet the criteria for equity classification and therefore were recorded as liabilities. The liability for these warrants was recorded at fair value on the date of the Business Combination and subsequently re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings.

Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement. These sponsor warrants had no fair value on the date of expiration.

There were no sponsor warrants exercised during the six months ended June 30, 2022. The 1.9 million sponsor warrants outstanding at June 30, 2022 had a fair value of \$0.1 million.

The Company determined the fair value of the sponsor warrants using the Black Scholes model with the following assumptions:

	June 30, 2022
Trading price of common stock on measurement date	\$ 3.06
Exercise price	\$ 5.75
Risk free interest rate	2.51%
Warrant life in years	0.6
Expected volatility	98.78%
Expected dividend yield	—

During the three and six months ended June 30, 2022, the Company recognized gains of \$0.3 million and \$4.3 million, respectively, in its condensed consolidated statements of operations related to decreases in the fair value of the sponsor warrants outstanding at the end of the respective period.

13. Other Long-Term Liabilities

Other long-term liabilities consist of the following (in thousands):

	June 30, 2023	December 31, 2022
Warranty accrual	\$ 20,172	\$ 20,744
Asset retirement obligations	2,163	2,098
Other	6	19
Total	22,341	22,861
Less – current portion of warranty accrual	(4,624)	(4,985)
Other long-term liabilities, net of current portion	<u>\$ 17,717</u>	<u>\$ 17,876</u>

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14. Commitments and Contingencies

Warranty Liabilities

The Company provides a limited warranty on most of the products it sells. The estimated warranty costs, which are expensed at the time of sale and included in cost of revenues, are based on the results of product testing, industry and historical trends and warranty claim rates incurred, and are adjusted for any current or expected trends as appropriate. Actual warranty claim costs could differ from these estimates. The Company regularly assesses and adjusts the estimate of accrued warranty claims by updating claims rates for actual trends and projected claim costs. The Company classifies estimated warranty costs expected to be paid beyond a year as a long-term liability.

The Company had the following activity for warranty liabilities (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Balance at beginning of period	\$ 19,997	\$ 16,368	\$ 20,744	\$ 15,013
Additions charged to expense for current period sales	1,471	2,173	2,167	4,336
Deduction from reserves for current period claims	(1,296)	(832)	(2,739)	(1,640)
Balance at end of period	<u>\$ 20,172</u>	<u>\$ 17,709</u>	<u>\$ 20,172</u>	<u>\$ 17,709</u>

Required Member Distributions

Prior to the Business Combination and pursuant to the then applicable First Amended and Restated Limited Liability Company Agreement (the “First Purple LLC Agreement”), Purple LLC was required to distribute to its members an amount equal to 45 percent of Purple LLC’s net taxable income following the end of each fiscal year. The First Purple LLC Agreement was amended and replaced by the Second Amended and Restated Limited Liability Company Agreement (the “Second Purple LLC Agreement”) on February 2, 2018 as part of the Business Combination. The Second Purple LLC Agreement was amended and replaced by the Third Amended and Restated Limited Liability Company Agreement (the “Third Purple LLC Agreement”) on September 3, 2020. The Second Purple LLC Agreement and the Third Purple LLC Agreement do not include any mandatory distributions, other than tax distributions. There were no tax distributions paid during the six months ended June 30, 2023 and 2022. At June 30, 2023, the Company’s condensed consolidated balance sheet had \$0.1 million of accrued tax distributions included in other current liabilities.

Subscription Agreement and Preemptive Rights

In February 2018, in connection with the Business Combination, the Company entered into a subscription agreement with Coliseum Capital Partners (“CCP”) and Blackwell Partners LLC – Series A (“Blackwell”), pursuant to which CCP and Blackwell agreed to purchase from the Company an aggregate of 4.0 million shares of Class A Stock at a purchase price of \$10.00 per share (the “Coliseum Private Placement”). In connection with the Coliseum Private Placement, the Sponsor assigned (i) an aggregate of 1.3 million additional shares of Class A common stock to CCP and Blackwell and (ii) an aggregate of 3.3 million warrants to purchase 1.6 million shares of Class A common stock to CCP, Blackwell, and Coliseum Co-Invest Debt Fund, L.P. (“CDF”). The subscription agreement provides CCP and Blackwell with preemptive rights with respect to future sales of the Company’s securities. It also provides them with a right of first refusal with respect to certain debt and preferred equity financings by the Company. The Company also entered into a registration rights agreement with CCP, Blackwell, and CDF, providing for the registration of the shares of Class A common stock issued and assigned to CCP and Blackwell in the Coliseum Private Placement, as well as the shares of Class A common stock underlying the warrants received by CCP, Blackwell and CDF. The Company has filed a registration statement with respect to such securities.

Rights of Securities Holders

The holders of certain warrants exercisable into Class A common stock, including CCP, Blackwell and CDF, were entitled to registration rights pursuant to certain registration rights agreements of the Company as of the Business Combination date. In March 2018, the Company filed a registration statement registering these warrants (and any shares of Class A common stock issuable upon the exercise of the warrants), and certain unregistered shares of Class A common stock. The registration statement was declared effective on April 3, 2018. Under the Registration Rights Agreement dated February 2, 2018 between the Company and CCP, Blackwell, and CDF (the “Coliseum Investors”), the Coliseum Investors have the right to make written demands for up to three registrations of certain warrants and shares of Class A common stock held by them, including in underwritten offerings. In an underwritten offering of such warrants and shares of Class A common stock by the Coliseum Investors, the Company will pay underwriting discounts and commissions and certain expenses incurred by the Coliseum Investors. In May 2021, the Coliseum Investors exercised the first of their three written demands for registration in an underwritten offering.

PURPLE INNOVATION, INC. Notes to Condensed Consolidated Financial Statements (unaudited)

Purple LLC Class B Unit Exchange Right

On February 2, 2018, in connection with the closing of the Business Combination, the Company entered into an exchange agreement with Purple LLC and InnoHold and Class B Unit holders who become a party thereto (the “Exchange Agreement”), which provides for the exchange of Purple LLC Class B Units (the “Class B Units”) and shares of Class B common stock (together with an equal number of Class B Units, the “Paired Securities”) for, at the Company’s option, either (A) shares of Class A common stock at an initial exchange ratio equal to one Paired Security for one share of Class A common stock or (B) a cash payment equal to the product of the average of the volume-weighted closing price of one share of Class A common stock for the ten trading days immediately prior to the date InnoHold or other Class B Unit holders deliver a notice of exchange multiplied by the number of Paired Securities being exchanged. In December 2018, InnoHold distributed Paired Securities to Terry Pearce and Tony Pearce who agreed to become parties to the Exchange Agreement. In June 2019, InnoHold distributed Paired Securities to certain current and former employees who also agreed to become parties to the exchange agreement. Holders of Class B Units may elect to exchange all or any portion of their Paired Securities as described above by delivering a notice to Purple LLC.

In certain cases, adjustments to the exchange ratio will occur in case of a split, reclassification, recapitalization, subdivision or similar transaction of or relating to the Class B Units or the shares of Class A common stock and Class B common stock or a transaction in which the Class A common stock is exchanged or converted into other securities or property. The exchange ratio will also adjust in certain circumstances when the Company acquires Class B Units other than through an exchange for its shares of Class A common stock.

The right of a holder of Paired Securities to exchange may be limited by the Company if it reasonably determines in good faith that such restrictions are required by applicable law (including securities laws), such exchange would not be permitted under other

agreements of such holder with the Company or its subsidiaries, including the Third Purple LLC Agreement, or if such exchange would cause Purple LLC to be treated as a “publicly traded partnership” under applicable tax laws.

The Company and each holder of Paired Securities shall bear its own expense regarding the exchange except that the Company shall be responsible for transfer taxes, stamp taxes and similar duties.

There were a de minimis number of Paired Securities exchanged for Class A common stock during the six months ended June 30, 2023. There were no Paired Securities exchanged for Class A common stock during the six months ended June 30, 2022.

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Maintenance of One-to-One Ratios

The Third Purple LLC Agreement includes provisions intended to ensure that the Company at all times maintains a one-to-one ratio between (a) (i) the number of outstanding shares of Class A common stock and (ii) the number of Class A Units owned by the Company (subject to certain exceptions for certain rights to purchase equity securities of the Company under a “poison pill” or similar stockholder rights plan, if any, certain convertible or exchangeable securities issued under the Company’s equity compensation plan and certain equity securities issued pursuant to the Company’s equity compensation plan (other than a stock option plan) that are restricted or have not vested thereunder) and (b) (i) the number of other outstanding equity securities of the Company (including the warrants exercisable for shares of Class A common stock) and (ii) the number of corresponding outstanding equity securities of Purple LLC. These provisions are intended to result in non-controlling interest holders having a voting interest in the Company that is identical to their economic interest in Purple LLC.

Non-Income Related Taxes

The Company complies with current law and collects and reports on sales tax and other taxes and required fees in all states in which it does business. The application of existing, new or revised taxes and fees on the Company’s business, in particular, sales taxes, VAT and similar taxes would likely increase the cost of doing business online and decrease the attractiveness of selling products over the internet. The application of these taxes and fees on the Company’s business could also create significant increases in internal costs necessary to capture data and collect and remit taxes and pay the fees. There have been, and will continue to be, substantial ongoing costs associated with complying with the various indirect tax requirements in the numerous markets in which the Company conducts or will conduct business.

Legal Proceedings

On September 20, 2020, Purple LLC filed a complaint in the U.S. Court of International Trade seeking to recover approximately \$7.0 million of Section 301 duties paid at the time of importation on certain Chinese-origin goods. More than 4,000 other complaints have been filed by other companies seeking similar refunds. On March 12, 2021 the United States filed a master answer that applies to all the Section 301 cases, including Purple LLC’s. On July 6, 2021, the court granted a preliminary injunction against liquidation of any unliquidated entries. On April 1, 2022, the court issued an opinion that remanded the case back to the U.S. Trade Representative (“USTR”) to address certain procedural flaws in USTR’s process for determining whether certain products were subject to the Section 301 duties. On August 1, 2022, USTR issued its remand results. On September 14, 2022, the plaintiffs submitted comments on the remand results. USTR filed their response to these comments on November 4, 2022. The plaintiffs filed a reply on December 5, 2022 and the court held a hearing on February 7, 2023. On March 17, 2023, the court issued a final opinion and order upholding the remand results. On May 12, 2023, the opinion and order were appealed to the US Court of Appeals for the Federal Circuit.

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On October 13, 2020, Purple LLC filed a lawsuit against Responsive Surface Technology, LLC and its parent company, PatienTech, LLC (collectively referred to as “ReST”) in the U.S. District Court for the District of Utah. The lawsuit arises from ReST’s multiple breaches of its obligations to Purple LLC, including infringing upon Purple LLC’s trademarks, patents, and trade dress, among other claims. Purple seeks monetary damages, injunctive relief, and declaratory judgment based on certain conduct by ReST (“Case I”). On October 21, 2020, shortly after the complaint was filed in Case I, ReST filed a retaliatory lawsuit against Purple LLC, and some of the Company’s board members, Gary DiCamillo, Adam Gray, Joseph Megibow, Terry Pearce, and Tony Pearce, also in the United States District Court for the District of Utah (“Case II”). Subsequently, the two cases were consolidated into one. Case II (now combined with Case I) involves many of the same facts and transactions as Case I. ReST subsequently filed a motion to compel arbitration of the claims in Case I. Purple LLC opposed the motion to compel arbitration, arguing that ReST waived any rights to arbitration and that all the claims in both cases should stay in the courts. However, the Court granted ReST’s motion to compel arbitration, and stayed the proceedings in the United States District Court for the District of Utah. Additionally, the Court ruled that ReST’s claims against the Company’s board members were not subject to arbitration, and the Court stayed ReST’s claims against those individuals. Pursuant to the Court’s order, Purple LLC filed a demand for arbitration with the American Arbitration Association (the “AAA”) on September 1, 2021. ReST filed its counterclaim with the AAA on September 21, 2021. The parties have completed the fact discovery and the expert discovery phases of the arbitration, and a two-week arbitration hearing began on July 31, 2023. ReST was sanctioned for improper litigation conduct, and certain defenses and claims were stricken and costs were ordered to be paid by ReST to Purple LLC. Purple LLC seeks over \$4 million in damages from ReST, whereas at this time ReST has lowered its demand and claims that Purple LLC is liable to it for approximately \$8 million. The outcome of this litigation cannot be predicted at this stage. However, Purple LLC intends to vigorously pursue its claims and defend against the claims made by ReST.

On May 3, 2022, Purple LLC filed a complaint against Photon Interactive UK Limited (“Photon”) in the U.S. District Court for the District of Delaware regarding a Master Professional Services Agreement with Photon dated on or around November 1, 2019. Pursuant to the agreement, Photon was required to rebuild Purple Innovation LLC’s website architecture and checkout process. Purple LLC paid Photon \$0.9 million under the Agreement. However, Photon failed to deliver any of the required deliverables as specified in the agreement. Purple LLC withheld payment of the final \$0.1 million due pursuant to Photon’s invoices pending a resolution with Photon. Since resolution discussions with Photon failed, Purple LLC filed its complaint for breach of contract against Photon seeking, among other damages, reimbursement for all amounts paid to Photon under the agreement. Photon counter-sued, seeking payment for the \$0.1 million withheld by Purple LLC, and also advancing a vague claim for tortious interference. On August 31, 2022, Purple LLC filed an amended complaint adding additional claims pertaining to Photon’s failure to deliver a point-of-sale system pursuant to the Master Professional Services Agreement. Purple LLC is seeking judgment against Photon in the amount of \$4 million. The litigation is presently in its discovery phase. Purple LLC expects discovery to conclude in fall 2023. The Company intends to vigorously litigate its claims to resolution.

On August 5, 2022, Purple LLC filed a complaint with the U.S. International Trade Commission (“ITC”) against numerous entities and individuals from the People’s Republic of China and South Korea (“Respondents”) that have been violating Purple LLC’s intellectual property rights related to pillow and seat cushion products. The complaint alleged that the Respondents have been violating 19 U.S.C. § 1337 by importing into the United States, selling for importation into the United States, and/or selling in the United States after importation pillow and seat cushion products that infringe Purple LLC’s trade dress rights or otherwise constitute unfair competition, infringe a certain Purple LLC design patent, infringe certain Purple LLC registered trademarks, and/or infringe certain Purple LLC utility patents, specifically including U.S. Patent No. 10,772,445. The complaint requested at least the following relief: (i) a General Exclusion Order excluding from entry into the United States all pillow and seat cushion products, regardless of the source of those products, that infringe Purple LLC’s asserted intellectual property right; (ii) Limited Exclusion Orders excluding from entry into the United States all pillow and cushion products of the Respondents named in the complaint that infringe any asserted intellectual property rights; and (iii) Cease and Desist Orders against the Respondents named in the complaint barring them from marketing, selling, advertising, or distributing infringing products in the United States, including via on-line retailers. On September 6, 2022, the ITC instituted Investigation No. 337-TA-1328 in response to Purple LLC’s complaint. Fact and expert discovery have been completed. Purple LLC has entered into settlement agreements with seven Respondents, and the ITC issued Consent Orders under which those seven Respondents agreed to no longer import infringing products into the United States. Purple LLC also has voluntarily terminated the Investigation as to a number of other Respondents. No actively litigating Respondents remain in the case. On July 13, 2023, the ITC Administrative Law Judge issued an Initial Determination (“ID”) in which she granted Purple LLC’s Motion for Summary Determination finding that the four remaining Respondents have violated Section 337. The ID also recommended that the ITC issue a General Exclusion Order excluding from entry into the United States all pillows that infringe certain asserted claims of the ‘445 patent, regardless of the source of those products, or, in the alternative, Limited Exclusion Orders directed specifically to the four remaining Respondents. The ID further recommended that the ITC issue Cease and Desist Orders directed specifically to the four remaining Respondents. The ITC’s target date for completion of the investigation is currently November 13, 2023.

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On September 22, 2022, Purple LLC filed an action in the U.S. District Court for the District of Utah, currently styled *Purple Innovation, LLC v. Foshan Dirani Design Furniture Co., Ltd.*, No. 2:22-cv-00620-HCN-DAO, against numerous entities and individuals from the People's Republic of China and South Korea ("Defendants"). Purple LLC subsequently entered into settlement agreements with seven Defendants and voluntarily dismissed without prejudice its claims against certain other Defendants. On March 7, 2023, Purple LLC filed a First Amended Complaint. The operative complaint alleges that the remaining Defendants have infringed certain Purple LLC registered trademarks, have infringed Purple LLC trademark rights and committed unfair competition under Lanham Act § 43(a), have infringed a certain Purple LLC design patent, have infringed certain Purple LLC utility patents, have violated Utah Unfair Competition Act, Utah Code § 13-5a-101 *et seq.*; and/or have committed common law unfair competition. The operative complaint seeks injunctive relief, compensatory damages, disgorgement of profits, punitive and exemplary damages, and attorneys' fees and costs. On June 13, 2023, the Court issued a Default Certificate entering default against all remaining Defendants. On June 15, 2023, Purple LLC filed a Motion for Preliminary Injunction, Asset Freeze, and Expedited Discovery, which currently remains pending, against all remaining Defendants. Purple LLC intends to vigorously litigate its claims to resolution.

In December 2022, Terry and Tony Pearce, Purple's founders, filed a complaint against Purple Inc. in the Fourth Judicial District Court in the State of Utah. The Pearces allege that they each entered into employment agreements with Purple LLC in February 2018. The Pearces contend that certain corporate transactions between May 2019 and June 2020 reduced their "ownership interest and voting power in Purple" and that, as a result, they should have continued to be paid a salary between August 2020, when they retired from Purple LLC, and December 2021. The Pearces calculate that they are each owed "no less than \$500,000" in unpaid salary. Purple Inc. has moved to dismiss the Pearces' claims in full, arguing that the Pearces' legal theories are flawed and that the amended pleading reflects the Pearces' inability to rehabilitate their claims. The Company maintains insurance to cover the costs of defending against claims of this nature and intends to continue to vigorously defend against these claims.

On April 3, 2023, InnoHold, LLC, Terry Pearce, and Tony Pearce (collectively, the "InnoHold Parties") filed a complaint against Purple LLC in the Delaware Court of Chancery, captioned *InnoHold, LLC et al. v. Purple Innovation, LLC*, Case No. 2023-0393-PAF (Del. Ch. Apr. 3, 2023). The complaint alleges that Purple LLC breached the Second Amended and Restated Limited Liability Company Agreement of Purple Innovation, LLC, dated as of February 2, 2018 (the "LLC Agreement"), and the implied covenant of good faith and fair dealing contained therein by failing to pay the full amount of tax distributions owed under the LLC Agreement. The complaint also asserts a claim for indemnification under the LLC Agreement. The InnoHold Parties seek damages of approximately \$3.0 million in allegedly unpaid tax distributions as well as its legal fees and expenses incurred in connection with the litigation. On June 13, 2023, Purple LLC filed an answer to the complaint denying the InnoHold Parties' allegations, setting forth its affirmative defenses, and requesting dismissal of all claims and entry of judgment in Purple LLC's favor. The outcome of the litigation cannot be predicted at this early stage in the proceedings. Purple LLC intends to vigorously defend against these claims.

On March 24, 2023, Purple LLC filed a complaint against Tempur Sealy International, Inc., Sealy Technology LLC and Sealy Mattress Manufacturing Co., LLC (collectively, "Sealy") in the U.S. District Court for the Middle District of North Carolina for infringement of Purple LLC's U.S. Patent No. 11,317,733 entitled "Mattress Including an Elastomeric Cushioning Element and a Pocketed Coil Layer and Related Methods." On July 17, 2023, Purple LLC filed a First Amended Complaint further detailing Sealy's infringement of the patent through Sealy's direct and indirect infringement by making, using, offering for sale, and/or importing into the United States Sealy FlexGrid Hybrid Construction mattresses. Purple seeks judgment of willful infringement, trebled damages, a permanent injunction, prejudgment and post-judgment interest, costs, expenses, and attorneys' fees. Sealy filed its response to Purple's First Amended Complaint on July 31, 2023. Discovery has yet to commence; and no trial date has been set. Purple LLC intends to vigorously litigate its claims to resolution.

On March 27, 2023, Sealy Technology, LLC ("Sealy Technology") filed a Petition for Cancellation with the U.S. Patent and Trademark Office, Trademark Trial and Appeal Board ("TTAB"), seeking cancellation of Purple LLC's Trademark Registration No. 5,416,146 for HYPER-ELASTIC POLYMER in Class 20 for "elastomeric polymer in pre-shaped form sold as an integral component of pillows" (the "Registration"). On June 6, 2023, Purple LLC filed a motion to dismiss (the "Motion"). On June 9, 2023, the TTAB suspended proceedings pending the resolution of the Motion. On June 18, 2023, Sealy Technology filed a response to the Motion, along

with an Amended Petition. The Amended Petition seeks cancellation of the Registration on the basis that the term is generic. Purple LLC filed its reply in support of the Motion, thus completing the briefing, on July 10, 2023. The Motion remains pending, and the proceeding remains suspended pending its resolution. Purple LLC intends to vigorously defend Sealy Technology's petition.

The Company is from time to time involved in various other claims, legal proceedings and complaints arising in the ordinary course of business. The Company does not believe that adverse decisions in any such pending or threatened proceedings, or any amount that the Company might be required to pay by reason thereof, would have a material adverse effect on the financial condition or future results of the Company.

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15. Related Party Transactions

The Company had various transactions with entities or individuals which are considered related parties.

Coliseum Capital Management, LLC

Immediately following the Business Combination, Adam Gray was appointed to the Company's Board. Mr. Gray is a manager of Coliseum Capital, LLC, which is the general partner of CCP and CDF, and he is also a managing partner of CCM, which is the investment manager of Blackwell and also manages investment funds and accounts. Mr. Gray has voting and dispositive control over securities held by CCP, CDF and Blackwell which were also Lenders under the Amended and Restated Credit Agreement. See Note 14—*Commitments and Contingencies—Subscription Agreement and Preemptive Rights* for further discussion.

On September 17, 2022, the Company received an unsolicited and non-binding proposal from Coliseum on behalf of certain investment funds and accounts to acquire the remaining outstanding common stock of the Company not already beneficially owned by Coliseum for \$4.35 per share in cash. At the time of the offer, Coliseum beneficially owned approximately 44.7% of the outstanding equity of the Company. On September 25, 2022, with the authorization of the Board, a special committee of independent and disinterested directors of the Company (the "Special Committee") was formed to determine the necessary actions to evaluate the Coliseum proposal and determine the course of action that was in the best interests of all the Company's shareholders. Initially, the Special Committee approved the adoption of a limited-duration stockholder rights agreement (the "Rights Agreement") with an expiration date of September 25, 2023. The Special Committee adopted the Rights Agreement in response to Coliseum's substantial increase in ownership of the Company's shares over the last year and the Special Committee's desire to have the time and flexibility necessary to evaluate the unsolicited and non-binding proposal from Coliseum to acquire the outstanding common stock of the Company not already beneficially owned by Coliseum. On January 12, 2023, the Company issued a press release stating the Special Committee had rejected Coliseum's unsolicited proposal.

Upon adopting the Rights Agreement, 300,000 shares of the Company's authorized shares of preferred stock, par value \$0.0001 per share, were designated as Series A Junior Participating Preferred Shares (the "Preferred Shares"). In accordance with the Rights Agreement, on September 25, 2022, the Special Committee authorized and declared a dividend of one preferred share purchase right (a "Right") for each outstanding share of the Company's Class A common stock and Class B common stock to stockholders of record at the close of business on October 6, 2022.

The initial issuance of the Rights as a dividend had no financial accounting or reporting impact. The fair value of the Rights was nominal since the Rights were not exercisable when issued and no value was attributable to them. Additionally, the Rights did not meet the definition of a liability under GAAP and was therefore not accounted for as a long-term obligation. Accordingly, the Rights Agreement had no impact on the Company's consolidated financial statements.

On February 14, 2023, the Company declared a dividend of one new PRPLS for each 100 shares of its common stock owned by the Company's shareholders. Each PRPLS would have voted together with the common stock in the election of directors, and related matters, and carried 10,000 votes each. Holders of PRPLS were entitled to allocate their votes among the nominees in director elections on a cumulative basis. PRPLS holders could have allocated all, none, or a portion of their votes to each director nominee up for election

at the Company's meetings of shareholders. On February 24, 2023, the Company issued 1.0 million PRPLS shares which traded with the common stock. While the PRPLS were outstanding, any new issuance of common stock would have automatically included a proportionate number of PRPLS. The PRPLS were redeemable at any time by an affirmative vote of two-thirds of the members of the Board. The PRPLS did not have any dividend rights and were entitled to only a limited payment upon any liquidation, dissolution or winding up in priority to any payments on the common stock but would not have otherwise participated in any liquidating distributions.

On February 21, 2023, Coliseum filed a lawsuit against the Company and several members of its Board alleging that the Company and the named directors authorized an improper dividend of preferred stock in bad faith to impede stockholder voting rights and interfered with Coliseum's nomination of a competing slate of director candidates ahead of our 2023 annual meeting of stockholders. On April 19, 2023, the Company entered into a Cooperation Agreement with Coliseum to resolve the litigation. The Cooperation Agreement, which became effective on April 27, 2023, resulted in the following:

- The size of the Board was increased from seven directors to eight directors.
- The Company amended and restated its Second Amended and Restated Bylaws to include references to the Lead Independent Director Charter.
- Board member and Coliseum managing partner Adam Gray was appointed Chairman of the Board.
- Board member Gary DiCamillo continued to serve as Lead Independent Director and was appointed chair of the Nomination and Governance Committee.

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- Paul Zepf and Pano Anthos resigned as directors of the Company.
- The Board appointed S. Hoby Darling, R. Carter Pate, and Erika Serow to fill the vacancies created by the increased the size of the board and the resignations of Mr. Zepf and Mr. Anthos.
- Scott Peterson, a stockholder and Board Observer since the Company's acquisition of Intellibed, was included as a nominee on the Board's slate of directors at the 2023 Annual Meeting in place of Dawn Zier, who had previously announced her decision not to stand for re-election.
- Other than as described above with respect to Dawn Zier, the Board nominated all incumbent directors for election at our annual meetings of stockholders to be held in 2023 and 2024.
- The Company amended its Corporate Governance Guidelines for Operation of the Board of Directors and adopted a Lead Independent Director Charter to provide for the responsibilities of the Lead Independent Director.
- The Company terminated the stockholder rights agreement adopted on September 25, 2022 and agreed not to adopt a new stockholder rights agreement prior to the termination of the Cooperation Agreement without Coliseum's prior consent. As a result, all shares of preferred stock previously designated as Series A Junior Participating Preferred Stock were eliminated and returned to the status of authorized but unissued shares of preferred stock, without designation.
- The Company redeemed all outstanding shares of PRPLS and agreed not to issue any similar security or take any other action prior to the termination of the Cooperation Agreement that would change the stockholder voting standards from those in effect prior to the issuance of the PRPLS. As a result, all shares of preferred stock previously designated as PRPLS were eliminated and returned to the status of authorized but unissued shares of preferred stock, without designation. The Company made a \$0.1 million payment to redeem the PRPLS based on a record date as of April 28, 2023. The PRPLS redemption payment was reflected in the Company's consolidated balance sheet as a reduction to additional paid-in capital.

- The Company agreed to reimburse Coliseum for up to \$4.0 million of out-of-pocket fees, costs, and expenses incurred in connection with the lawsuit.
- The Company terminated the Special Committee.
- Coliseum dismissed its litigation against the Company.

At the 2023 and 2024 annual meetings of stockholders, Coliseum caused or will cause all of the common stock that Coliseum or any of its affiliates had the direct or indirect right to vote as of the applicable record date, to be present in person or by proxy for quorum purposes and to be voted (i) in favor of each of the candidates for election on the Company's slate of nominees for election to the Board, (ii) against any stockholder nominations for any other directors, and (iii) against any proposals or resolutions to remove any member of the Board other than for cause.

- Coliseum agreed to be bound by customary standstill restrictions, including, among others, agreements not to acquire additional shares of the Company's securities that would cause Coliseum's ownership of Voting Securities to exceed 44.4% of the total outstanding Common Stock (other than acquisitions directly from the Company), engage in proxy solicitations and related matters, form or join any "group" with respect to shares of the Company, encourage others to pursue a "contested solicitation," or make any public proposals, subject to certain exceptions.

- Coliseum agreed to condition any proposal from it or any of its affiliates to acquire the Company or all or substantially all of the outstanding stock of the Company held by stockholders unaffiliated with Coliseum on (i) such transaction being negotiated by, and subject to the approval of, a special committee of directors of the Board who are independent with respect to Coliseum and disinterested under Delaware law and (ii) a nonwaivable condition that such transaction be approved by the affirmative vote of the holders of a majority of the Company's outstanding common stock not beneficially owned by Coliseum or its affiliates or other parties with a material conflict of interest in such transaction.
- The Cooperation Agreement shall terminate on the day following the date on which the 2024 annual meeting of stockholders is held.

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Purple Founder Entities

TNT Holdings, LLC (herein "TNT Holdings"), EdiZONE, LLC, (herein EdiZONE an entity wholly owned by TNT Holdings) and InnoHold (collectively the "Purple Founder Entities") were entities under common control with Purple LLC prior to the Business Combination. TNT Holdings and InnoHold are majority owned and controlled by Terry Pearce and Tony Pearce (the "Purple Founders"), who were appointed to the Company's Board following the Business Combination. InnoHold was a majority shareholder of the Company until it sold a portion of its interests in a secondary public offering in May 2020 and the remainder of its interests in a secondary public offering in September 2020. The Purple Founders also resigned as employees of Purple LLC and retired from the Company's Board in August 2020.

TNT Holdings owned the Alpine facility Purple LLC has been leasing since 2010, and the Purple Founders informed Purple LLC that TNT Holdings recently transferred ownership to 123E LLC, an entity controlled by the Purple Founders. Effective as of October 31, 2017, Purple LLC entered into an Amended and Restated Lease Agreement with TNT Holdings. The Company determined that neither TNT Holdings nor 123E LLC are a VIE as neither the Company nor Purple LLC hold any explicit or implicit variable interest in TNT Holdings or 123E LLC and do not have a controlling financial interest in TNT Holdings or 123E LLC. Purple LLC incurred \$0.3 million and \$0.6 million in rent expense to 123E LLC or TNT Holdings for the building lease of the Alpine facility for the three and six months ended June 30, 2023, respectively, and \$0.2 million and \$0.4 million for the three and six months ended June 30, 2022, respectively. Purple LLC continues to lease the Alpine facility that was formerly the Company headquarters, for use in production, research and development and video production. In accordance with the terms of that lease, on September 3, 2021, Purple LLC gave notice to 123E

LLC that it intended to exercise its right to an early termination of the lease to occur on September 30, 2022. On July 20, 2022, the Company entered into an amendment to its Alpine facility lease agreement with 123E LLC. The amendment rescinded the Company's previous notice of termination that was scheduled to be effective September 30, 2022 and extended the term such that the lease will remain in effect until September 30, 2023.

During the six months ended June 30, 2023, a former employee of Purple LLC who received distributions of Paired Securities from InnoHold exchanged a minimal number of Paired Securities for Class A common stock. There were no such exchanges during the six months ended June 30, 2022.

16. Stockholders' Equity

Class A Common Stock

The Company has 210.0 million shares of Class A common stock authorized at a par value of \$0.0001 per share. Holders of the Company's Class A common stock are entitled to one vote for each share held on all matters to be voted on by the stockholders and participate in dividends, if declared by the Board, or receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock. Holders of Class A common stock and holders of Class B common stock voting together as a single class, have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Holders of Class A common stock and Class B common stock are entitled to one vote per share on matters to be voted on by stockholders. At June 30, 2023, 105.3 million shares of Class A common stock were outstanding.

Class B Common Stock

The Company has 90.0 million shares of Class B common stock authorized at a par value of \$0.0001 per share. Holders of the Company's Class B common stock will vote together as a single class with holders of the Company's Class A common stock on all matters properly submitted to a vote of the stockholders. Shares of Class B common stock may be issued only to InnoHold, their respective successors and assigns, as well as any permitted transferees of InnoHold. A holder may transfer their shares of Class B common stock to any transferee (other than the Company) only if such holder also simultaneously transfers an equal number of such holder's Purple LLC Class B Units to such transferee in compliance with the Third Purple LLC Agreement. The Class B common stock is not entitled to receive dividends, if declared by the Board, or to receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock.

In connection with the Business Combination, approximately 44.1 million shares of Class B common stock were issued to InnoHold as part of the equity consideration. InnoHold subsequently transferred a portion of its shares to permitted transfers and exchanged its remaining shares for Class A common stock that it sold. All of the 0.4 million shares of Class B common stock outstanding at June 30, 2023 were held by other parties.

PURPLE INNOVATION, INC. Notes to Condensed Consolidated Financial Statements (unaudited)

Preferred Stock

The Company has 5.0 million shares of preferred stock authorized at a par value of \$0.0001 per share. The preferred stock may be issued from time to time in one or more series. The directors are expressly authorized to provide for the issuance of shares of the preferred stock in one or more series and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, designations and other special rights or restrictions. At June 30, 2023, there were no shares of preferred stock outstanding.

On February 14, 2023, the Company declared a dividend of one new PRPLS for each 100 shares of its common stock owned by the Company's shareholders. Each PRPLS had the right to vote together with the common stock in the election of directors, and related matters, and carried 10,000 votes each. Holders of PRPLS were entitled to allocate their votes among the nominees in director

elections on a cumulative basis. PRPLS holders could have allocated all, none, or a portion of their votes to each director nominee up for election at the Company's meetings of shareholders. On February 24, 2023, the Company issued 1.0 million PRPLS shares which traded with the common stock. While the PRPLS were outstanding, any new issuance of common stock would have automatically included a proportionate number of PRPLS. The PRPLS were redeemable at any time by an affirmative vote of two-thirds of the members of the Board. The PRPLS did not have any dividend rights and were entitled to only a limited payment upon any liquidation, dissolution or winding up in priority to any payments on the common stock but would not have otherwise participated in any liquidating distributions. As a result of the Cooperation Agreement, all shares of preferred stock previously designated as PRPLS were eliminated and returned to the status of authorized but unissued shares of preferred stock, without designation. The Company made a \$0.1 million payment to redeem the PRPLS based on a record date as of April 28, 2023. The PRPLS redemption payment was reflected in the Company's consolidated balance sheet as a reduction to additional paid-in capital. At June 30, 2023 there were no PRPLS issued or outstanding. See Note 15—*Related Parties—Coliseum Capital Management, LLC* for additional detail regarding redemption of the PRPLS.

Sponsor Warrants

There were 12.8 million sponsor warrants issued pursuant to a private placement simultaneously with the Company's initial public offering. The 1.9 million sponsor warrants that remained outstanding at December 31, 2022 expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement. These sponsor warrants had no fair value on the date of expiration. There were no sponsor warrants exercised during the six months ended June 30, 2022.

Noncontrolling Interest

Noncontrolling interest ("NCI") is the membership interest in Purple LLC held by holders other than the Company. At June 30, 2023 and December 31, 2022, the combined NCI percentage in Purple LLC was 0.4% and 0.5%, respectively. The Company has consolidated the financial position and results of operations of Purple LLC and reflected the proportionate interest held by all such Purple LLC Class B Unit holders as NCI.

17. Income Taxes

The Company's sole material asset is Purple LLC, which is treated as a partnership for U.S. federal income tax purposes and for purposes of certain state and local income taxes. Purple LLC's net taxable income and any related tax credits are passed through to its members and are included in the members' tax returns, even though such net taxable income or tax credits may not have actually been distributed. While the Company consolidates Purple LLC for financial reporting purposes, the Company will be taxed on its share of earnings of Purple LLC not attributed to the noncontrolling interest holders, which will continue to bear their share of income tax on its allocable earnings of Purple LLC. The income tax burden on the earnings taxed to the noncontrolling interest holders is not reported by the Company in its consolidated financial statements under GAAP.

PURPLE INNOVATION, INC. Notes to Condensed Consolidated Financial Statements (unaudited)

The Company reported income tax expense related to various state taxes of \$0.1 million on a pretax loss of \$60.9 million for the six months ended June 30, 2023 as compared to an income tax benefit of \$6.0 million on a pretax loss of \$28.0 million for the six months ended June 30, 2022. This resulted in an effective tax rate of (0.24)% for the six months ended June 30, 2023 as compared to 21.4% for the six months ended June 30, 2022. The Company's effective tax rate for the six months ended June 30, 2023 differs from the statutory federal rate of 21% primarily due to the impact of the full valuation allowance recorded against the Company's deferred tax assets at June 30, 2023.

In connection with the Business Combination, the Company entered into a tax receivable agreement with InnoHold, which provides for the payment by the Company to InnoHold of 80% of the net cash savings, if any, in U.S. federal, state and local income tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the Closing as a result of (i) any tax basis increases in the assets of Purple LLC resulting from the distribution to InnoHold of the cash consideration, (ii) the tax basis increases in the assets of Purple LLC resulting from the redemption by Purple LLC or the exchange by the Company, as applicable, of

Class B Paired Securities or cash, as applicable, and (iii) imputed interest deemed to be paid by the Company as a result of, and additional tax basis arising from, payments it makes under the agreement.

As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of their Class B Units, a tax receivable agreement liability may be recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. The amount of the increase in asset basis, the related estimated cash tax savings and the attendant liability to be recorded will depend on the price of the Company's Class A common stock at the time of the relevant redemption or exchange.

The estimation of liability under the tax receivable agreement is by its nature imprecise and subject to significant assumptions regarding the amount and timing of future taxable income. As of June 30, 2023, the Company estimated that if all the remaining 0.4 million Class B units were redeemed for shares of its Class A common stock, the tax receivable agreement liability would be approximately \$168.5 million. If the Company experiences a change of control (as defined under the tax receivable agreement, which includes certain mergers, asset sales and other forms of business combinations and change of control events), it could be required to make an immediate lump-sum payment under the terms of the tax receivable agreement. Management currently estimates the liability associated with this lump-sum payment (or "early termination payment") would be approximately \$110.7 million on a discounted basis. This potential early termination payment can be significantly impacted by the discounted interest rate at the time of termination.

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
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The effects of uncertain tax positions are recognized in the consolidated financial statements if these positions meet a "more-likely-than-not" threshold. For those uncertain tax positions that are recognized in the consolidated financial statements, liabilities are established to reflect the portion of those positions it cannot conclude "more-likely-than-not" to be realized upon ultimate settlement. The Company's policy is to recognize interest and penalties related to unrecognized tax benefits on the income tax expense line in the accompanying consolidated statement of operations. Accrued interest and penalties would be included on the related tax liability line in the consolidated balance sheet. As of June 30, 2023, no material uncertain tax positions were recognized as liabilities in the condensed consolidated financial statements.

18. Net Loss Per Common Share

Basic net income (loss) per common share is calculated by dividing net income (loss) attributable to common stockholders by the weighted average number of shares of Class A stock outstanding during each period. Diluted net income (loss) per share reflects the weighted-average number of common shares outstanding during the period used in the basic net income (loss) computation plus the effect of common stock equivalents that are dilutive.

The following table sets forth the calculation of basic and diluted weighted average shares outstanding and net loss per share for the periods presented (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Numerator:				
Net loss attributable to Purple Innovation, Inc. – basic	\$ (37,509)	\$ (8,340)	\$ (60,809)	\$ (21,842)
Less – net loss attributed to noncontrolling interest	—	(70)	—	(199)
Net loss attributable to Purple Innovation, Inc. – diluted	<u>\$ (37,509)</u>	<u>\$ (8,410)</u>	<u>\$ (60,809)</u>	<u>\$ (22,041)</u>
Denominator:				
Weighted average shares—basic	105,079	82,703	101,760	74,924
Add – dilutive effect of Class B shares	—	448	—	448
Weighted average shares—diluted	<u>105,079</u>	<u>83,151</u>	<u>101,760</u>	<u>75,372</u>
Net loss per common share:				

Basic	\$	(0.36)	\$	(0.10)	\$	(0.60)	\$	(0.29)
Diluted	\$	(0.36)	\$	(0.10)	\$	(0.60)	\$	(0.29)

For the three and six months ended June 30, 2023, the Company excluded 3.0 million and 3.4 million, respectively, of Paired Securities convertible into an equal number of Class A shares, stock options and restricted stock as the effect was anti-dilutive. For the three and six months ended June 30, 2022, the Company excluded 3.3 million and 3.5 million, respectively, of Class A common shares issuable upon conversion of certain warrants, stock options, restricted stock and Class A shares subject to vesting as the effect was anti-dilutive.

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
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19. Equity Compensation Plans

2017 Equity Incentive Plan

The Purple Innovation, Inc. 2017 Equity Incentive Plan, as amended and restated (the “2017 Plan”), provides for grants of stock options, stock appreciation rights, restricted stock units and other stock-based awards. Directors, officers and other employees and subsidiaries and affiliates, as well as others performing consulting or advisory services for the Company and its subsidiaries, will be eligible for grants under the 2017 Plan. As of June 30, 2023, an aggregate of 2.6 million shares remain available for issuance or use under the 2017 Plan.

Class A Stock Awards

In June 2023, the Company granted stock awards under the 2017 Incentive Plan to non-executive directors on the Board. The stock awards vested immediately and the Company issued 0.2 million shares of Class A common stock and recognized \$0.6 million in expense during the three months ended June 30, 2023, which represented the fair value of the stock awards on the grant date.

Amended and Restated Grant Agreements

On March 15, 2023, in accordance with the 2017 Incentive Plan, the Company entered into amended and restated grant agreements relating to stock options and restricted stock unit awards previously granted to the Company’s chief executive officer in March 2022 and June 2022. The amended agreements revised the vesting schedule of the awards included in each grant. Pursuant to these agreements, 0.3 million of restricted stock units and stock options fully vested on March 25, 2023, another 0.3 million of restricted stock units and stock options, which included conditionally granted awards that were approved by shareholders at the 2023 Annual Meeting, will vest on March 25, 2024, and the remaining 0.3 million of conditionally granted awards approved by shareholders at the 2023 Annual Meeting will vest in full on March 25, 2025. These amendments resulted in the acceleration of \$0.8 million of stock-based compensation expense into the first quarter of 2023 compared to the expense that would have been recorded based on vesting under the original agreements.

Employee Stock Options

Following receipt of shareholder approval of certain amendments to the 2017 Plan at the 2023 Annual Meeting, the 0.3 million stock options granted to the Company’s chief executive officer in June 2023 have an exercise price of \$6.82 per option and expire in four years and vest over a two-year period. The Company determined the fair value of this award to be \$0.1 million on the effective date, which will be expensed on a straight-line basis over the vesting period.

The Company determined the fair value of the options granted during the six months ended June 30, 2023 using the Black Scholes method with the following weighted average assumptions:

Fair market value	\$	0.22
Exercise price	\$	6.82

Risk free interest rate	4.48%
Expected term in years	2.58
Expected volatility	44.98%
Expected dividend yield	—

The following table summarizes the Company's total stock option activity for the six months ended June 30, 2023:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Intrinsic Value (in thousands)
Options outstanding as of January 1, 2023	819	\$ 8.68	2.3	\$ —
Granted	295	6.82	—	—
Exercised	—	—	—	—
Forfeited/cancelled	(240)	7.26	—	—
Options outstanding as of June 30, 2023	874	\$ 8.44	2.7	\$ —

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
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Outstanding and exercisable stock options as of June 30, 2023 are as follows:

Exercise Prices	Options Outstanding		Options Exercisable		
	Number of Options Outstanding (in thousands)	Weighted Average Remaining Life (Years)	Number of Options Exercisable (in thousands)	Weighted Average Remaining Life (Years)	Intrinsic Value (in thousands)
\$ 6.51	151	0.9	151	0.9	\$ —
6.82	500	3.8	167	3.8	—
7.99	19	1.4	19	1.4	—
8.32	108	1.0	105	1.0	—
13.12	61	1.9	49	1.9	—
32.28	35	2.7	21	2.7	—

The following table summarizes the Company's unvested stock option activity for the six months ended June 30, 2023:

	Options (in thousands)	Weighted Average Grant Date Fair Value
Nonvested options as of January 1, 2023	307	\$ 2.84
Granted	295	0.22
Vested	(218)	2.35
Forfeited	(22)	2.70
Nonvested options as of June 30, 2023	362	\$ 0.95

The estimated fair value of Company stock options is amortized over the options vesting period on a straight-line basis. For the three and six months ended June 30, 2023, the Company recognized stock option expense of \$0.1 million and \$0.4 million, respectively.

The Company recorded stock option expense of \$0.2 million and \$0.3 million during the three and six months ended June 30, 2022, respectively.

As of June 30, 2023, outstanding stock options had \$0.3 million of unrecognized stock compensation cost with a remaining recognition period of 1.7 years.

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
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Employee Restricted Stock Units

During the second quarter of 2023, the Company granted 2.4 million restricted stock units under the 2017 Incentive Plan to certain members of the Company's management team. Approximately one-half of the restricted stock units granted included a market vesting condition. The restricted stock awards that did not have a market vesting condition had a weighted average grant date fair value of \$2.75 per share. The estimated fair value of these awards is recognized on a straight-line basis over the vesting period. For those awards that include a market vesting condition, the estimated fair value of the restricted stock was measured on the grant date and incorporated the probability of vesting occurring. The estimated fair value is recognized over the derived service period (as determined by the valuation model), with such recognition occurring regardless of whether the market condition is met. The Company determined the weighted average grant date fair value of the awards with the market vesting condition to be \$1.92 per share using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following weighted average assumptions:

Trading price of common stock on measurement date	\$ 2.72
Risk free interest rate	4.29%
Expected life in years	2.7
Expected volatility	89.9%
Expected dividend yield	—

The following table summarizes the Company's restricted stock unit activity for the six months ended June 30, 2023:

	Number Outstanding (in thousands)	Weighted Average Grant Date Fair Value
Nonvested restricted stock units as of January 1, 2023	1,235	\$ 5.47
Granted	2,429	2.33
Vested	(306)	6.24
Forfeited	(165)	6.07
Nonvested restricted stock units as of June 30, 2023	<u>3,193</u>	<u>\$ 2.98</u>

The Company recorded restricted stock unit expense of \$0.9 million and \$1.8 million during the three and six months ended June 30, 2023, respectively, and \$0.5 million and \$0.9 million during the three and six months ended June 30, 2022, respectively.

As of June 30, 2023, outstanding restricted stock units had \$7.7 million of unrecognized stock compensation cost with a remaining recognition period of 2.3 years.

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
(unaudited)

Aggregate Non-Cash Stock-Based Compensation

The Company has accounted for all stock-based compensation under the provisions of ASC 718 *Compensation—Stock Compensation*. This standard requires the Company to record a non-cash expense associated with the fair value of stock-based compensation over the requisite service period.

The following table summarizes the aggregate non-cash stock-based compensation recognized in the statement of operations for stock awards, employee stock options and employee restricted stock units (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Cost of revenues	\$ 23	\$ 104	\$ 98	\$ 170
Marketing and sales	240	266	215	403
General and administrative	1,332	861	2,452	1,184
Research and development	66	44	88	60
Total non-cash stock-based compensation	\$ 1,661	\$ 1,275	\$ 2,853	\$ 1,817

20. Employee Retirement Plan

In July 2018 the Company established a 401(k) plan that qualifies as a deferred compensation arrangement under Section 401 of the IRS Code. All eligible employees over the age of 18 and with 4 months' service are eligible to participate in the plan. The plan provides for Company matching of employee contributions up to 5% of eligible earnings. Company contributions immediately vest. The Company's matching contribution expense was \$0.9 million and \$1.8 million for the three and six months ended June 30, 2023, respectively, and \$0.9 million and \$1.9 million for the three and six months ended June 30, 2022, respectively.

21. Subsequent Events

New Credit Agreements

On August 7, 2023, Purple LLC, Purple Inc. and Intellibed, (collectively the "Loan Parties") entered into a term loan credit agreement (the "Term Loan Agreement") with Callodine Commercial Finance, LLC and a group of financial institutions (the "Term Loan Lenders"). Also, on August 7, 2023, the Loan parties entered into a separate financing arrangement with the Bank of Montreal and a group of financial institutions (collectively the "ABL Lenders") that provides for a revolving asset-based credit facility (the "ABL Agreement"). Pursuant to entering into these agreements, the Company incurred fees and expenses of \$3.1 million that will be reflected as debt issuance costs in the third quarter of 2023.

Term Loan Agreement and Term Loan Pledge and Security Agreement

The Term Loan Agreement provides for up to \$25.0 million of term loans, with up to \$5.0 million of incremental term loans available, subject to certain conditions (collectively, the "Term Loans"). Proceeds from the Term Loans, which were fully drawn at closing, will be used for general corporate purposes. The borrowing rates under the Term Loan Agreement are based on SOFR, plus a credit spread adjustment of 0.15% per annum, plus 8.5% per annum, with a SOFR floor of 2.0% per annum. The Term Loans will be repaid at the earlier of (a) a three-year amortization schedule ending on August 7, 2026 or (b) the payment in full of the ABL Agreement. The Term Loans may be prepaid in whole or in part at any time, but subject to a prepayment premium. There may also be mandatory prepayment obligations based on certain asset dispositions, casualty events and extraordinary receipts. Once repaid, no portion of the Term Loans may be reborrowed.

Pursuant to a pledge and security agreement, the Loan Parties' obligations under the Term Loan Agreement are secured by a perfected second-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected first-priority security interest in substantially all other assets of the Loan Parties, including, without limitation, the intellectual property and equipment of the Loan Parties, subject to certain exceptions.

The Term Loan Agreement provides for customary events of default such as for non-payment and failure to perform or observe covenants. The Term Loan Agreement contains customary indemnifications that benefit the Term Loan Lenders.

The Term Loan Agreement also contains representations, warranties and certain covenants of the Loan Parties. While any amounts are outstanding under the Term Loan Agreement, the Loan Parties are subject to a number of affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, each of which are subject to certain exceptions. In particular, the Loan Parties are (i) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the Term Loan Agreement, and (ii) required to maintain a minimum revolving loan availability under the ABL Agreement. Each Loan Party is also restricted from paying dividends or making other distributions or payments on its respective capital stock, subject to limited exceptions. If the Loan Parties fail to perform their obligations under these and other covenants, or should any event of default occur, the Term Loans, together with accrued interest, could be declared immediately due and payable.

PURPLE INNOVATION, INC.
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ABL Agreement and ABL Pledge and Security Agreement

The ABL Agreement provides for up to \$50.0 million of revolving loans subject to a borrowing base calculation (with sub-facilities for swing line loans and the issuance of letters of credit), with incremental increases available up to \$20.0 million, subject to certain conditions (the “ABL Loans”). No funds were drawn under the ABL Agreement at closing. The Company anticipates that any funds drawn from under the ABL Agreement will be used to finance permitted acquisitions defined in the agreement and for working capital, capital expenditures and other general corporate purposes. Outstanding principal and accrued interest on the ABL Loans shall be repaid on August 7, 2026.

The borrowing rates under the ABL Agreement will accrue on a three-tiered grid based on revolving availability, ranging from (i) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 2.75% per annum to (ii) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 3.25% per annum, with a SOFR floor of 0% per annum. The ABL Loans may be prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. There may be mandatory prepayment obligations based on certain asset dispositions, casualty events, equity issuances and extraordinary receipts.

Pursuant to a pledge and security agreement, the Loan Parties’ obligations under the ABL Agreement are secured by a perfected first-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected second-priority security interest in substantially all of the other assets of the Loan Parties, subject to certain exceptions.

The ABL Agreement provides for customary events of default such as non-payment and failure to perform or observe covenants. The ABL Agreement contains customary indemnifications that benefit the ABL Lenders.

The ABL Agreement also contains representations, warranties and certain covenants of the Loan Parties. The Loan Parties are subject to affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, in each case, subject to certain exceptions. In particular, the Loan Parties are (i) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the ABL Agreement, and (ii) if revolving availability under the ABL Agreement is less than a specified amount, required to maintain a minimum Consolidated Fixed Charge Coverage Ratio (as defined in the ABL Agreement), and (iii) required to maintain a specified minimum revolving availability. Each Loan Party is also restricted from paying dividends or making other distributions or payments on its respective capital stock, subject to limited exceptions. If the Loan Parties fail to perform their obligations under these and other covenants, or should any event of default occur, the revolving loan commitments under the ABL Agreement may be terminated and any outstanding ABL Loans, together with accrued interest, could be declared immediately due and payable and any outstanding letters of credit may be required to be cash collateralized.

Termination of 2020 Credit Agreement

In connection with the Company's execution of the Term Loan Agreement and ABL Credit Agreement, the Company terminated its 2020 Credit Agreement. The Company had no outstanding borrowings under the term loan or the revolving line of credit at the time of termination.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion is intended to provide a more comprehensive review of the operating results and financial condition of Purple Innovation, Inc. than can be obtained from reading the Unaudited Condensed Consolidated Financial Statements alone. The discussion should be read in conjunction with the Unaudited Condensed Consolidated Financial Statements and the notes thereto included in "Part I. Item 1. Financial Statements."

FORWARD-LOOKING STATEMENTS

This quarterly report on Form 10-Q (this "Quarterly Report") contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that represent our current expectations and beliefs. All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws. In some cases, you can identify these statements by forward-looking words such as "believe," "expect," "project," "anticipate," "estimate," "intend," "plan," "targets," "likely," "will," "would," "could," "may," "might," the negative of these words and other similar words.

All forward-looking statements included in this Quarterly Report are made only as of the date thereof. It is routine for our internal projections and expectations to change throughout the year, and any forward-looking statements based upon these projections or expectations may change prior to the end of the next quarter or year. In addition, any statements that refer to projections of our future financial performance, our anticipated growth and trends in our businesses (including the discussion under the heading "Outlook for Growth"), and other characterizations of future events or circumstances are forward-looking statements.

We caution and advise readers that these statements are only predictions and are subject to risks, uncertainties, and assumptions that are difficult to predict, including those included in the "Risk Factors" section of this Quarterly Report and in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 22, 2023, as amended on May 1, 2023. Therefore, actual results may differ materially and adversely from those expressed in any forward-looking statements and investors are cautioned not to place undue reliance on any such statements. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise, except as required by law.

Overview of Our Business

Our mission is to help people feel and live better through innovative comfort solutions.

We are an omni-channel Company that began as a digitally-native vertical brand founded on comfort product innovation with premium offerings. We design and manufacture a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, frames, sheets, duvets, duvet covers, and other products. Our products are the result of over 30 years of innovation and investment in proprietary and patented comfort technologies and the development of our own manufacturing processes. Our proprietary Hyper-Elastic Polymer gel technology underpins many of our comfort products and provides a range of benefits that differentiate our offerings from other competitors' products. We market and sell our products directly to consumers through our e-commerce and Purple owned retail showroom channels, online marketplaces and retail wholesale partners.

Organization

Our business consists of Purple Inc. and its consolidated subsidiary, Purple LLC. Purple Inc. was incorporated in Delaware on May 19, 2015 as a special purpose acquisition company under the name of GPAC. On February 2, 2018, Purple Inc. consummated a transaction structured similar to a reverse recapitalization pursuant to which Purple Inc. acquired an equity interest in Purple LLC as

holder of all Class A units and became its sole managing member. As the sole managing member of Purple LLC, Purple Inc., through its officers and directors, is responsible for all operational and administrative decision making and control of the day-to-day business affairs of Purple LLC without the approval of any other member. At June 30, 2023, Purple Inc. had a 99.6% economic interest in Purple LLC while other Class B Unit holders had the remaining 0.4%.

On August 31, 2022, we acquired all the issued and outstanding stock of Intellibed pursuant to the Merger Agreement. On October 3, 2022, Purple Inc. contributed 100% of the membership interest in Intellibed to Purple LLC and Intellibed became a wholly owned subsidiary of Purple LLC. We believe the addition of Intellibed has increased product offerings to customers, expanded market opportunities, capitalized on synergies of the combined companies, and increased opportunities for innovation. In addition, the acquisition consolidated ownership of our intellectual property licensed to Intellibed and we believe will enable us to more fully capitalize on growing demand for products with our proprietary gel technologies. For further discussion see Note 4 — *Acquisition*.

Executive Summary – Results of Operations

Net revenues decreased 16.1% to \$120.9 million and 19.9% to \$230.2 million for the three and six months ended June 30, 2023, respectively, when compared to the corresponding periods in the prior year. These decreases were primarily due to continued softening demand in the industry for home-related products, inflationary pressure on consumer discretionary spending, forward buying of consumers in recent years, industry-standard price reductions on the sell-in of new mattress and adjustable base floor models to wholesale partners and increased discounting of discontinued models sold through our DTC channels. Additionally, although we began ramping up marketing efforts in mid-May to support our new product lineups, the planned pullback in advertising spend prior to that impacted demand during the quarter.

Gross profit decreased 21.2% to \$38.5 million and 18.7% to \$81.7 million for the three and six months ended June 30, 2023, respectively, when compared to the corresponding periods in the prior year. These decreases were primarily due to corresponding decreases in sales volume. Our gross profit percentage on a year-to-date basis, which increased to 35.5% of net revenues in 2023 from 35.0% in 2022, benefited from the ongoing realization of efficiency and cost saving initiatives put in place during the first half of 2022. These benefits were offset in part by new mattress and base floor models being sold to our wholesale partners at reduced pricing coupled with increased discounting of discontinued models sold through our DTC channels as we transitioned to our new Premium and Luxe product lineups.

Operating expenses increased 24.4% to \$75.7 million and 7.7% to \$141.0 million for the three and six months ended June 30, 2023, respectively, when compared to the corresponding periods in the prior year. These increases were primarily due to legal and professional fees of \$8.2 million and \$14.1 million incurred by the Special Committee during the three and six months ended June 30, 2023, respectively. Included in those amounts are a \$4.0 million accrual made in the second quarter of 2023 for the settlement amount owed to Coliseum. Marketing and sales expenses were \$6.0 million higher in the second quarter due mainly to the increased number of showrooms and the associated costs, increased wholesale marketing costs and increased advertising spend to align with the launch of our new Premium and Luxe product lineups in May 2023.

Other expense totaled \$1.7 million for the six months ended June 30, 2023 compared to other income of \$2.4 million for the six months ended June 30, 2022. Other expense in 2023 included a \$1.2 million loss on extinguishment of the Company's term loan during the first quarter. Other income in 2022 primarily reflected a \$4.3 million gain related to a decrease in the fair value of the sponsor warrants outstanding at the end of June 30, 2022.

Net loss was \$37.5 million and \$60.8 million for the three and six months ended June 30, 2023, respectively, compared to net losses of \$29.2 million and \$21.8 million for the three and six months ended June 30, 2022, respectively.

Recent Developments in Our Business

Operational Developments

In 2022 and continuing into 2023, we expanded our focus on product development and increased our innovation capabilities. As a result, in May 2023, we launched our new Premium and Luxe product lineups. This launch was supported by enhancements to our in-store presence and refinements to our marketing programs and brand messaging. Although the response to our new products and new brand positioning has been positive, we continue to experience softening demand for home-related products in 2023 due to forward buying in recent years and inflationary pressures on consumer discretionary spending. Also, as consumer spending habits have moved away from the COVID era e-commerce spike in purchases to brick and mortar buying, we have invested in showroom expansion and grown the number of Purple owned retail showrooms to 56 at June 30, 2023 from 40 at the end of June 30, 2022. Although we added only one new showroom during the first six months of 2023, we expect to add additional new showrooms across the remainder of the year. In addition, we have focused on growing our placements with wholesale partners and improving wholesale door productivity. In the second quarter, less than half of our approximately 3,300 wholesale doors were transitioned to our new line of mattress products. We expect to convert the remaining wholesale doors to our new product lineup by the end of the year. Showroom expansion and improving the sales productivity of both our wholesale doors and existing showrooms remain primary focuses and are critical components of our strategy to respond to shifting demand patterns. After several years of hyper growth and increased investments to support current and future expansion, we are building the framework for improved operational maturity and accountability after focusing on right-sizing our operations, improving our execution, and refining our strategies that will drive share gains in the premium mattress category and position us for accelerated growth. Beginning in 2022 and continuing into 2023, we purposely reduced our advertising spending to improve marketing efficiency, conserve profitability in a challenging macroeconomic environment and align spending with current demand levels. With the introduction of our new product lineups, we initiated a new marketing campaign and increased advertising spend in May and June 2023. We believe we have set the right course for the next stage of growth for the Company. June, the first full month with our new product in-market, was the strongest month of 2023 with a revenue run rate up double digits to the first 5 months of the year.

Coliseum Cooperation Agreement

On February 21, 2023, Coliseum filed a lawsuit against us and several members of our Board alleging that we and the named directors authorized an improper dividend of preferred stock in bad faith to impede stockholder voting rights and interfered with Coliseum's nomination of a competing slate of director candidates ahead of our 2023 annual meeting of stockholders. On April 19, 2023, we entered into a Cooperation Agreement with Coliseum to resolve the litigation. The Cooperation Agreement, which became effective on April 27, 2023, resulted in the following:

- The size of the Board was increased from seven directors to eight directors.
- We amended and restated our Second Amended and Restated Bylaws to include references to our Lead Independent Director Charter.
- Board member and Coliseum managing partner Adam Gray was appointed Chairman of the Board.
- Board member Gary DiCamillo continued to serve as Lead Independent Director and was appointed chair of the Nomination and Governance Committee.
- Paul Zepf and Pano Anthos resigned as directors of the Company.
- The Board appointed S. Hoby Darling, R. Carter Pate, and Erika Serow to fill the vacancies created by the increased the size of the board and the resignations of Mr. Zepf and Mr. Anthos.
- Scott Peterson, a stockholder and Board Observer since our acquisition of Intellibed, was included as a nominee on the Board's slate of directors at the 2023 Annual Meeting in place of Dawn Zier, who had previously announced her decision not to stand for re-election.
- Other than as described above with respect to Dawn Zier, the Board nominated all incumbent directors for election at our annual meetings of stockholders to be held in 2023 and 2024.
- We amended our Corporate Governance Guidelines for Operation of the Board of Directors and adopted a Lead Independent Director Charter to provide for the responsibilities of the Lead Independent Director.
- We terminated the stockholder rights agreement adopted on September 25, 2022 and agreed not to adopt a new stockholder rights agreement prior to the termination of the Cooperation Agreement without Coliseum's prior consent. As a result,

all shares of preferred stock previously designated as Series A Junior Participating Preferred Stock were eliminated and returned to the status of authorized but unissued shares of preferred stock, without designation.

We redeemed all outstanding shares of PRPLS and agreed not to issue any similar security or take any other action prior to the termination of the Cooperation Agreement that would change the stockholder voting standards from those in effect prior to the issuance of the PRPLS. As a result, all shares of preferred stock previously designated as PRPLS were eliminated and returned to the status of authorized but unissued shares of preferred stock, without designation. We made a \$0.1 million payment to redeem the PRPLS based on a record date as of April 28, 2023. The PRPLS redemption payment was reflected in our consolidated balance sheet as a reduction to additional paid-in capital.

- We agreed to reimburse Coliseum for up to \$4.0 million of out-of-pocket fees, costs, and expenses incurred in connection with the lawsuit.
- We terminated the Special Committee.

- Coliseum dismissed its litigation against us.

At the 2023 and 2024 annual meetings of stockholders, Coliseum caused or will cause all of the common stock that Coliseum or any of its affiliates had the direct or indirect right to vote as of the applicable record date, to be present in person or by proxy for quorum purposes and to be voted (i) in favor of each of the candidates for election on the Company's slate of nominees for election to the Board, (ii) against any stockholder nominations for any other directors, and (iii) against any proposals or resolutions to remove any member of the Board other than for cause.

- Coliseum agreed to be bound by customary standstill restrictions, including, among others, agreements not to acquire additional shares of the Company's securities that would cause Coliseum's ownership of Voting Securities to exceed 44.4% of the total outstanding Common Stock (other than acquisitions directly from the Company), engage in proxy solicitations and related matters, form or join any "group" with respect to shares of the Company, encourage others to pursue a "contested solicitation," or make any public proposals, subject to certain exceptions.

Coliseum agreed to condition any proposal from it or any of its affiliates to acquire the Company or all or substantially all of the outstanding stock of the Company held by stockholders unaffiliated with Coliseum on (i) such transaction being negotiated by, and subject to the approval of, a special committee of directors of the Board who are independent with respect to Coliseum and disinterested under Delaware law and (ii) a nonwaivable condition that such transaction be approved by the affirmative vote of the holders of a majority of the Company's outstanding common stock not beneficially owned by Coliseum or its affiliates or other parties with a material conflict of interest in such transaction.

- The Cooperation Agreement shall terminate on the day following the date on which the 2024 annual meeting of stockholders is held.

Shelf Registration Statement and Equity Financing

On January 30, 2023, the Form S-3 shelf registration statement we filed with the SEC in December 2022 became effective. As a result, we may offer and sell from time to time, in one or more series or issuances and on terms that we will determine at the time of the offering, any combination of the securities described in the registration statement, up to an aggregate amount of \$90.0 million.

In February 2023, we completed an underwritten offering of 13.4 million shares of Class A common stock at a public offering price of \$4.50 per share. The underwriters did not exercise their over-allotment option. The aggregate net proceeds received by us from the offering, after deducting offering fees and expenses of \$3.3 million, totaled \$57.0 million.

Debt Financing

On August 7, 2023, Purple LLC, Purple Inc. and Intellibed, (collectively the "Loan Parties") entered into a term loan credit agreement (the "Term Loan Agreement") with Callodine Commercial Finance, LLC and a group of financial institutions. Also, on August

7, 2023, the Loan parties entered into a separate financing arrangement with the Bank of Montreal and a group of financial institutions (collectively the “ABL Lenders”) that provides for a revolving asset-based credit facility (the “ABL Agreement”). Pursuant to entering into these agreements, the Company incurred fees and expenses of \$3.1 million that will be reflected as debt issuance costs in the third quarter of 2023.

The Term Loan Agreement provides for up to \$25.0 million of term loans, with up to \$5.0 million of incremental term loans available, subject to certain conditions (collectively, the “Term Loans”). Proceeds from the Term Loans, which were fully drawn at closing, will be used for general corporate purposes. The borrowing rates under the Term Loan Agreement are based on SOFR, plus a credit spread adjustment of 0.15% per annum, plus 8.5% per annum, with a SOFR floor of 2.0% per annum. The Term Loans will be repaid at the earlier of (a) a three-year amortization schedule ending on August 7, 2026 or (b) the payment in full of the ABL Agreement. The Term Loans may be prepaid in whole or in part at any time, but subject to a prepayment premium. There may also be mandatory prepayment obligations based on certain asset dispositions, casualty events and extraordinary receipts. Once repaid, no portion of the Term Loans may be reborrowed.

Pursuant to a pledge and security agreement, the Loan Parties’ obligations under the Term Loan Agreement are secured by a perfected second-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected first-priority security interest in substantially all other assets of the Loan Parties, including, without limitation, the intellectual property and equipment of the Loan Parties, subject to certain exceptions.

The ABL Agreement provides for up to \$50.0 million of revolving loans subject to a borrowing base calculation (with sub-facilities for swing line loans and the issuance of letters of credit), with incremental increases available up to \$20.0 million, subject to certain conditions (the “ABL Loans”). No funds were drawn under the ABL Agreement at closing. The Company anticipates that any funds drawn from under the ABL Agreement will be used to finance permitted acquisitions, as defined in the ABL Agreement and for working capital, capital expenditures and other general corporate purposes. Outstanding principal and accrued interest on the ABL Loans shall be repaid on August 7, 2026.

The borrowing rates under the ABL Agreement will accrue on a three-tiered grid based on revolving availability, ranging from (i) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 2.75% per annum to (ii) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 3.25% per annum, with a SOFR floor of 0% per annum. The ABL Loans may be prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. There may be mandatory prepayment obligations based on certain asset dispositions, casualty events, equity issuances and extraordinary receipts.

Pursuant to a pledge and security agreement, the Loan Parties’ obligations under the ABL Agreement are secured by a perfected first-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected second-priority security interest in substantially all of the other assets of the Loan Parties, subject to certain exceptions.

On September 3, 2020, Purple LLC entered into a financing arrangement with KeyBank National Association and a group of financial institutions (the “2020 Credit Agreement”). The 2020 Credit Agreement provided for a \$45.0 million term loan and a \$55.0 million revolving line of credit. The term loan was to be repaid in accordance with a five-year amortization schedule or prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. The revolving credit facility had a term of five years and carried the same interest provisions as the term debt.

On February 17, 2023, we entered into a fifth amendment to the 2020 Credit Agreement. As a condition of entering into the amendment, we made a payment of \$24.7 million to satisfy the outstanding balance on the term loan plus accrued interest. The amendment revised various financial covenants and certain definitions of key terms, reduced the amount available under the revolving line of credit to \$50.0 million, provided that the maturity date of the 2020 Credit Agreement would spring forward to June 30, 2024 if consolidated EBITDA was not greater than \$15.0 million for 2023, reduced limits on maximum growth capital expenditures, and revised the current minimum liquidity covenant. Pursuant to this amendment, we incurred fees and expenses of \$2.9 million that were recorded as debt issuance costs in the condensed consolidated balance sheet. The amendment was accounted for as an extinguishment of debt and \$1.2 million of unamortized debt issuance costs related to the term loan were recorded as loss on extinguishment of debt in the condensed consolidated statement of operations.

In connection with our execution of the Term Loan Agreement and ABL Agreement, the Company terminated its 2020 Credit Agreement. The Company had no outstanding borrowings under the term loan or the revolving line of credit at the time of termination. The termination was accounted for as an extinguishment of debt and \$3.1 million of unamortized debt issuance costs related to the 2020 Credit Agreement will be recorded as a loss on extinguishment of debt in the third quarter of 2023.

Outlook for Growth

We believe that our four strategic initiatives – accelerating innovation, brand elevation, developing our three distribution channels and operational excellence – will be fundamental to our future success.

To support our plans for future growth and sustained profitability, we are focusing on the following opportunities:

- Strengthen our wholesale relationships, prioritize existing door productivity, and develop and execute our other strategies to meaningfully expand our wholesale business.
- Expand and mature our fleet of Purple owned retail showrooms in 2023, increase door productivity, provide a brand halo benefit to other channels in the surrounding areas, strengthen the relationship with the consumer, and increase the share of more profitable DTC revenue mix.
- Build brand position to grow our market share of the premium and luxury mattress categories. We launched our new Premium and Luxe product lineups in the second quarter of 2023. This launch was supported by enhancements to our in-store presence and refinements to our marketing programs and brand messaging.
- Refine and enhance marketing strategies to reach a broader audience, increase customer engagement and reduce dependency on price promotions as a means of driving sales.
- Strengthen research and development disciplines and go-to-market processes to further develop our current product categories and position our business to eventually expand to additional categories.
- Manage production labor and capacity utilization to promote efficient use of our manufacturing facilities as we grow into our production footprint.
- Manage input costs, operating efficiencies, and pricing to further enhance our gross margin.

There is no guarantee that we will be able to effectively execute on these opportunities, which are subject to risks, uncertainties, and assumptions that are difficult to predict, including the risks described under “Risk Factors” and elsewhere herein. Therefore, actual results may differ materially and adversely from those described above. In addition, we may, in the future, adapt these focuses in response to changes in the market or our business.

Operating Results for the Three Months Ended June 30, 2023 and 2022

The following table sets forth for the periods indicated, our results of operations and the percentage of total revenue represented in our condensed consolidated statements of operations:

Three Months Ended June 30,

	2023	% of Net Revenues	2022	% of Net Revenues
Revenues, net	\$ 120,872	100.0%	\$ 144,109	100.0%
Cost of revenues	82,408	68.2	95,297	66.1
Gross profit	38,464	31.8	48,812	33.9
Operating expenses:				
Marketing and sales	46,379	38.4	40,373	28.0
General and administrative	26,437	21.9	18,779	13.0
Research and development	2,925	2.4	1,748	1.2
Total operating expenses	75,741	62.7	60,900	42.3
Operating loss	(37,277)	(30.8)	(12,088)	(8.4)
Other income (expense):				
Interest expense	(352)	(0.3)	(707)	(0.5)
Other income (expense), net	37	—	(136)	(0.1)
Change in fair value – warrant liabilities	—	—	346	0.2
Total other expense, net	(315)	(0.3)	(497)	(0.3)
Net loss before income taxes	(37,592)	(31.1)	(12,585)	(8.7)
Income tax (expense) benefit	(72)	(0.1)	4,175	2.9
Net loss	(37,664)	(31.2)	(8,410)	(5.8)
Net loss attributable to noncontrolling interest	(155)	(0.1)	(70)	—
Net loss attributable to Purple Innovation, Inc.	<u>\$ (37,509)</u>	<u>(31.0)</u>	<u>\$ (8,340)</u>	<u>(5.8)</u>

Revenues, Net

Net revenues decreased \$23.2 million, or 16.1%, to \$120.9 million for the three months ended June 30, 2023 compared to \$144.1 million for the three months ended June 30, 2022. The decrease in net revenues was primarily due to continued softening demand in the industry for home related products, inflationary pressure on consumer discretionary demand, forward buying of consumers in recent years, price reductions of floor models and increased discounting on discontinued models sold through our DTC channels as we launched our new Premium and Luxe product lineups. The decline in net revenues from a sales channel perspective consisted of DTC net revenues decreasing \$13.6 million, or 16.6% and wholesale net revenues declining \$9.7 million, or 15.5%. Within DTC, e-commerce net revenues decreased \$15.5 million, or 23.1%, while Purple owned retail showroom net revenues increased \$2.0 million, or 13.5%. The decrease in e-commerce net revenues reflected the impact of the reasons previously stated. The increase in Purple owned retail showroom net revenue was driven by showrooms increasing from 40 at the end of June 2022 to 56 at the end of June 2023. The decrease in wholesale net revenues, which reflected the impact of the reasons previously stated, was also affected by reduced purchases from existing wholesale partners ahead of the launch of our new Premium and Luxe product lineups coupled with floor models of our new mattress and base products being sold to our wholesale partners at reduced pricing.

Cost of Revenues

Cost of revenues decreased \$12.9 million, or 13.5%, to \$82.4 million for the three months ended June 30, 2023 compared to \$95.3 million for the three months ended June 30, 2022. This decrease was primarily due to a corresponding decrease in sales volume. Our gross profit percentage, which decreased to 31.8% of net revenues in the second quarter of 2023 from 33.9% in the second quarter of 2022, was negatively impacted by the transition to our new Premium and Luxe product lineups whereby floor models of our new mattress and base products were sold to our wholesale partners at reduced pricing coupled with increased discounting of discontinued models sold through our DTC channels.

Marketing and Sales

Marketing and sales expense increased \$6.0 million, or 14.9%, to \$46.4 million for the three months ended June 30, 2023 compared to \$40.4 million for the three months ended June 30, 2022. Marketing and sales expense as a percentage of net revenues was 38.4% in the second quarter of 2023 compared to 28.0% in the second quarter of 2022. This increase reflected a \$3.7 million increase

in costs associated with showroom expansion, and a \$2.6 million increase in wholesale marketing. In addition, advertising spending increased \$1.2 million, or 6.0%, to \$20.1 million for the three months ended June 30, 2023 compared to \$18.9 million for the three months ended June 30, 2022. Advertising spend began increasing in mid-May to align with the launch of our new Premium and Luxe product lineups. These increases were offset in part by a \$1.5 million decrease in other marketing and sales costs.

General and Administrative

General and administrative expense increased \$7.7 million, or 40.8%, to \$26.4 million for the three months ended June 30, 2023 compared to \$18.8 million for the three months ended June 30, 2022. This increase was primarily due to legal and professional fees incurred by the Special Committee, which included a \$4.0 million accrual for the settlement amount owed to Coliseum.

Research and Development

Research and development costs increased \$1.2 million, or 67.3%, to \$2.9 million for the three months ended June 30, 2023 compared to \$1.7 million for the three months ended June 30, 2022. This increase primarily reflected our focus on new product innovation initiatives to remain competitive and advance our current product line.

Operating Loss

Operating loss increased \$25.2 million to \$37.3 million for the three months ended June 30, 2023 compared to \$12.1 million for the three months ended June 30, 2022. The larger operating loss primarily resulted from a decrease in gross profit that was driven by lower sales and a reduced gross profit percentage, an increase in higher marketing and sales costs primarily associated with our new product launch, and an increase in general and administrative expense resulting from legal and professional fees incurred by the Special Committee and attributable to the Cooperation Agreement with Coliseum.

Interest Expense

Interest expense totaled \$0.4 million for the three months ended June 30, 2023 compared to \$0.7 million for the three months ended June 30, 2022. This decrease was primarily due to interest expense incurred during the three months ended June 30, 2022 on the term loan that was paid off in February 2023.

Change in Fair Value – Warrant Liabilities

Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the agreement. These sponsor warrants had no fair value on the date of expiration. During the three months ended June 30, 2022, we recognized a gain of \$0.3 million in our condensed consolidated statement of operations related to a decrease in the fair value of the warrants outstanding at the end of the quarter. The 1.9 million sponsor warrants outstanding at June 30, 2022 had a fair value of \$0.1 million.

Income Tax (Expense) Benefit

We had income tax expense of \$0.1 million for the three months ended June 30, 2023 compared to an income tax benefit of \$4.2 million for the three months ended June 30, 2022. The income tax expense amount in 2023 resulted from various state income taxes.

Noncontrolling Interest

We calculate net income or loss attributable to noncontrolling interests on a quarterly basis using their weighted average ownership percentage. Net loss attributed to noncontrolling interests was \$0.2 million for the three months ended June 30, 2023 compared to a net loss of \$0.1 million for the three months ended June 30, 2022.

Operating Results for the Six Months Ended June 30, 2022 and 2021

The following table sets forth for the periods indicated, our results of operations and the percentage of total revenue represented in our statements of operations:

	Six Months Ended June 30,			
	2023	% of Net Revenues	2022	% of Net Revenues
Revenues, net	\$ 230,244	100.0%	\$ 287,288	100.0%
Cost of revenues	148,557	64.5	186,850	65.0
Gross profit	81,687	35.5	100,438	35.0
Operating expenses:				
Marketing and sales	84,552	36.7	90,332	31.4
General and administrative	50,104	21.8	36,667	12.8
Research and development	6,297	2.7	3,891	1.4
Total operating expenses	140,953	61.2	130,890	45.6
Operating loss	(59,266)	(25.7)	(30,452)	(10.6)
Other income (expense):				
Interest expense	(554)	(0.2)	(1,730)	(0.6)
Other income (expense), net	110	—	(119)	—
Change in fair value – warrant liabilities	—	—	4,274	1.5
Loss on extinguishment of debt	(1,217)	(0.5)	—	—
Total other income (expense), net	(1,661)	(0.7)	2,425	0.8
Net loss before income taxes	(60,927)	(26.5)	(28,027)	(9.8)
Income tax benefit (expense)	(144)	(0.1)	5,986	2.1
Net loss	(61,071)	(26.5)	(22,041)	(7.7)
Net loss attributable to noncontrolling interest	(262)	(0.1)	(199)	(0.1)
Net loss attributable to Purple Innovation, Inc.	\$ (60,809)	(26.4)	\$ (21,842)	(7.6)

Revenues, Net

Net revenues decreased \$57.0 million, or 19.9%, to \$230.2 million for the six months ended June 30, 2023 compared to \$287.3 million for the six months ended June 30, 2022. The decrease in net revenues was primarily due to continued softening demand in the industry for home-related products, inflationary pressure on consumer discretionary demand, forward buying of consumers in recent years, price reductions of floor models and increased discounting on discontinued models sold through our DTC channels as we launched our new Premium and Luxe product lineups. The decline in net revenues from a sales channel perspective consisted of DTC net revenues decreasing \$32.6 million, or 19.5% and wholesale net revenues declining \$24.4 million, or 20.4%. Within DTC, e-commerce net revenues decreased \$37.6 million, or 26.7%, while Purple owned retail showroom net revenues increased \$5.0 million, or 18.9%. The decrease in e-commerce net revenues reflected the impact of the reasons previously stated. The increase in Purple owned retail showroom net revenue was driven by showrooms increasing from 40 at the end of June 2022 to 56 at the end of June 2023. The decrease in wholesale net revenues, which reflected the impact of the reasons previously stated, was also affected by reduced purchases from existing wholesale partners ahead of the launch of our new Premium and Luxe product lineups coupled with floor models of our new mattress and base products being sold to our wholesale partners at reduced pricing.

Cost of Revenues

Cost of revenues decreased \$38.3 million, or 20.5%, to \$148.6 million for the six months ended June 30, 2023 compared to \$186.9 million for the six months ended June 30, 2022. This decrease was primarily due to a corresponding decrease in sales volume. Our gross profit percentage, which increased to 35.5% of net revenues in 2023 from 35.0% in 2022, benefited from the ongoing realization of efficiency and cost saving initiatives put in place during the first half of 2022, offset in part floor models of our new mattress and base products being sold to our wholesale partners at reduced pricing coupled with increased discounting of discontinued models sold through our DTC channels as we transitioned to our new Premium and Luxe product lineups. The gross profit percentage in 2022 was adversely impacted by unfavorable cost absorption from lower than planned production volumes in prior months, and elevated levels of materials, labor and overhead costs.

Marketing and Sales

Marketing and sales expense decreased \$5.8 million, or 6.4%, to \$84.6 million for the six months ended June 30, 2023 compared to \$90.3 million for the six months ended June 30, 2022. This decrease reflected a \$10.9 million decline in advertising spending and a \$4.9 million decrease in other marketing costs. The reduction in advertising spending was primarily due to management focusing its efforts on improving marketing efficiency with its legacy products and then increasing advertising spend to align with the launch of our new Premium and Luxe product lineups in May 2023. The decrease in other marketing costs reflected the impact of management restructuring the marketing organization in the first half of 2022. These decreases were offset in part by a \$9.5 million increase in marketing and sales costs associated with showroom expansion. Marketing and sales expense as a percentage of net revenues was 36.7% during the first six months of 2023 compared to 31.4% for the first six months of 2022. The higher percentage of revenues reflected the impact of lower sales coupled with management's expanded marketing efforts in the second quarter of 2023 to support the launch of our new Premium and Luxe product lineups in May 2023.

General and Administrative

General and administrative expense increased \$13.4 million, or 36.6%, to \$50.1 million for the six months ended June 30, 2023 compared to \$36.7 million for the six months ended June 30, 2022. This increase was primarily due to legal and professional fees incurred by the Special Committee, which included a \$4.0 million accrual made in the second quarter of 2023 for the settlement amount owed to Coliseum.

Research and Development

Research and development costs increased \$2.4 million, or 61.8%, to \$6.3 million for the six months ended June 30, 2023 compared to \$3.9 million for the six months ended June 30, 2022. This increase primarily reflected our focus on new product innovation initiatives to remain competitive and advance our current product line.

Operating Income (Loss)

Operating loss increased \$28.8 million to \$59.3 million for the six months ended June 30, 2023 compared to \$30.5 million for the six months ended June 30, 2022. The larger operating loss primarily resulted from a decrease in gross profit that was driven by lower sales coupled with an increase in general and administrative expense resulting from legal and professional fees incurred by the Special Committee and attributable to the Cooperation Agreement with Coliseum.

Interest Expense

Interest expense totaled \$0.6 million for the six months ended June 30, 2023 compared to \$1.7 million for the six months ended June 30, 2022. The lower amount in 2023 was primarily due to the six months ended June 30, 2022 including a greater amount of interest expense related to the term loan that was paid off in February 2023 and interest expense for the \$55.0 million revolving line of credit that was drawn down by the Company in November 2021 and repaid in full on March 31, 2022.

Change in Fair Value – Warrant Liabilities

Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the agreement. These sponsor warrants had no fair value on the date of expiration and a de minimis fair value at the previous reporting date. During the six months ended June 30, 2022, we recognized a gain of \$4.3 million in our condensed consolidated statement of operations related to a decrease in the fair value of the warrants outstanding at the end of the quarter.

Loss on Extinguishment of Debt

On February 17, 2023, the Company entered into a fifth amendment to the 2020 Credit Agreement and repaid in full the \$24.7 million outstanding balance of the term loan plus accrued interest. The amendment was accounted for as an extinguishment of debt during the first quarter of 2023 and \$1.2 million of unamortized debt issuance costs were recorded as loss on extinguishment of debt in the condensed consolidated statement of operations.

Income Tax (Expense) Benefit

We had income tax expense of \$0.1 million for the six months ended June 30, 2023 compared to an income tax benefit of \$6.0 million for the six months ended June 30, 2022. The income tax expense amount in 2023 resulted from various state income taxes.

Noncontrolling Interest

We calculate net income or loss attributable to noncontrolling interests on a quarterly basis using their weighted average ownership percentage. Net loss attributed to noncontrolling interests was \$0.3 million for the six months ended June 30, 2023 compared to a net loss of \$0.2 million for the six months ended June 30, 2022.

Liquidity and Capital Resources

Our principal sources of funds are cash flows from operations and cash and cash equivalents on hand, supplemented with borrowings made pursuant to our asset-based lending facility and proceeds received from offerings of our equity capital. Principal uses of funds consist of payments of principal and interest on our debt facilities, capital expenditures, working capital needs, and operating lease payment obligations. Our working capital needs depend largely upon the timing of cash receipts from product sales, payments to vendors and others, changes in inventories, and operating lease payment obligations. Our unrestricted cash and working capital positions were \$25.2 million and \$43.9 million, respectively, as of June 30, 2023 compared to \$40.0 million and \$62.4 million, respectively, as of December 31, 2022. Cash used for capital expenditures decreased from \$26.1 million in the first six months of 2022 to \$5.8 million during the first six months of 2023. Our capital expenditures in the first six months of 2023 primarily consisted of primarily consisted of additional investments made in our manufacturing facilities in Utah and Georgia.

In the event our cash flow from operations or other sources of financing are less than anticipated, we believe we will be able to fund operating expenses based on our ability to scale back operations, reduce marketing spend, use the liquidity we have available under our new credit facility and postpone or discontinue our growth strategies. In such event, this could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain all of our employees. We may also consider seeking additional funding sources including new debt or equity capital.

Based on our current projections, we believe our cash on hand, amounts available under our asset-based lending arrangement, and expected cash to be generated from our operations will be sufficient to meet our working capital requirements and cover anticipated capital expenditures for at least the next 12 months.

Shelf Registration Statement and Offering of Class A Common Stock

On January 30, 2023, the Form S-3 shelf registration statement we filed with the SEC in December 2022 became effective. As a result, we may offer and sell from time to time, in one or more series or issuances and on terms that we will determine at the time of the offering, any combination of the securities described in the registration statement, up to an aggregate amount of \$90.0 million.

In February 2023, we completed an underwritten offering of 13.4 million shares of Class A common stock at a public offering price of \$4.50 per share. The underwriters did not exercise their over-allotment option. The aggregate net proceeds received by us from the offering, after deducting offering fees and expenses of \$3.1 million, totaled \$57.0 million.

Debt

On August 7, 2023, the Loan Parties entered into the Term Loan Agreement with Callodine Commercial Finance, LLC and a group of financial institutions. Also, on August 7, 2023, the Loan parties entered into a separate financing arrangement with the ABL

Lenders, that provides for the ABL Agreement. Pursuant to entering into these agreements, the Company incurred fees and expenses of \$3.1 million that will be reflected as debt issuance costs in the third quarter of 2023.

The Term Loan Agreement provides for up to \$25.0 million of term loans, with up to \$5.0 million of incremental Term Loans, subject to certain conditions (collectively, the “Term Loans”). Proceeds from the Term Loans, which were fully drawn at closing, will be used for general corporate purposes. The borrowing rates under the Term Loan Agreement are based on SOFR, plus a credit spread adjustment of 0.15% per annum, plus 8.5% per annum, with a SOFR floor of 2.0% per annum. The Term Loans will be repaid at the earlier of (a) a three-year amortization schedule or (b) the payment in full of the ABL Agreement. The Term Loans may be prepaid in whole or in part at any time, but subject to a prepayment premium. There may also be mandatory prepayment obligations based on certain asset dispositions, casualty events and extraordinary receipts. Once repaid, no portion of the Term Loans may be reborrowed.

Pursuant to a pledge and security agreement, the Loan Parties’ obligations under the Term Loan Agreement are secured by a perfected second-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected first-priority security interest in substantially all other assets of the Loan Parties, including, without limitation, the intellectual property and equipment of the Loan Parties, subject to certain exceptions.

The ABL Agreement provides for up to \$50.0 million of revolving loans subject to a borrowing base calculation (with sub-facilities for swing line loans and the issuance of letters of credit), with incremental increases available up to \$20.0 million, subject to certain conditions. No funds were drawn under the ABL Agreement at closing. The Company anticipates that any funds drawn from under the ABL Agreement will be used to finance permitted acquisitions, as defined in the ABL Agreement, and for working capital, capital expenditures and other general corporate purposes. Outstanding principal and accrued interest on the ABL Loans shall be repaid on August 7, 2026.

The borrowing rates under the ABL Agreement will accrue on a three-tiered grid based on revolving availability, ranging from (i) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 2.75% per annum to (ii) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 3.25% per annum, with a SOFR floor of 0% per annum. The ABL Loans may be prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. There may be mandatory prepayment obligations based on certain asset dispositions, casualty events, equity issuances and extraordinary receipts.

Pursuant to a pledge and security agreement, the Loan Parties’ obligations under the ABL Agreement are secured by a perfected first-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected second-priority security interest in substantially all of the other assets of the Loan Parties, subject to certain exceptions.

In connection with the Company’s execution of the Term Loan Agreement and ABL Agreement, the Company terminated its 2020 Credit Agreement. The Company had no outstanding borrowings under the term loan or the revolving line of credit at the time of termination.

Tax Receivable Agreement

We are required to make certain payments to InnoHold under the tax receivable agreement, which may have a material adverse effect on our liquidity and capital resources. As of both June 30, 2023 and December 31, 2022, there was no tax receivable agreement liability reflected in either of these consolidated balance sheets. For reasons similar to those that led to the recording of a full valuation allowance on our deferred tax assets in the fourth quarter of 2022, we evaluated the probability of amounts being owed pursuant to the tax receivable agreement and determined the likelihood of a future liability was not probable. As result, we continued to record no tax receivable agreement liability in the second quarter of 2023. We are currently unable to determine the total future amount of these payments due to the unpredictable nature of several factors, including the timing of future exchanges, the market price of shares of Class A common stock at the time of the exchanges, the extent to which such exchanges are taxable and the amount and timing of future taxable income sufficient to utilize tax attributes that give rise to the payments under the agreement.

Other Contractual Obligations

Other material contractual obligations primarily include operating lease payment obligations. Also, as discussed above regarding the Cooperation Agreement, we will reimburse Coliseum for all out-of-pocket fees, costs, and expenses incurred in connection with their

complaint, provided that such an amount shall not exceed \$4.0 million in the aggregate. See Notes 9 and 15 of the condensed consolidated financial statements for additional information on leases and the Cooperation Agreement, respectively.

Cash Flows for the Six Months Ended June 30, 2023 Compared to the Six Months Ended June 30, 2022

The following summarizes our cash flows for the six months ended June 30, 2023 and 2022 as reported in our condensed consolidated statements of cash flows (in thousands):

	Six Months Ended June 30,	
	2023	2022
Net cash used in operating activities	\$ (38,053)	\$ (52,804)
Net cash used in investing activities	(5,823)	(26,055)
Net cash provided by financing activities	29,071	28,412
Net decrease in cash	(14,805)	(50,447)
Cash, beginning of the period	41,754	91,616
Cash, end of the period	<u>\$ 26,949</u>	<u>\$ 41,169</u>

Cash used in operating activities was \$37.9 million and \$52.8 million for the six months ended June 30, 2023 and 2022, respectively. Cash used in operating activities in 2023 was primarily comprised of a net loss of \$61.1 million, offset in part by non-cash adjustments totaling \$17.6 million. These non-cash adjustments primarily related to \$12.9 million of depreciation and amortization, a \$1.2 million loss on the extinguishment of debt and \$2.9 million of stock-based compensation. Changes in operating assets and liabilities increased cash used in operating activities by \$5.4 million in 2023. This increase primarily reflected a \$11.5 million decrease in accounts receivable and a \$3.3 million increase in accounts payable, offset by a \$5.1 million increase in inventories combined with a \$4.0 million decrease in accrued rebates and allowances. The decline in accounts receivable was due in part to a \$13.6 million decrease in wholesale net revenues in the second quarter of 2023 compared to the fourth quarter of 2022. The increase in inventories was primarily due to an increase in finished goods inventory. The decrease in accrued rebates and allowances primarily resulted from a large credit memo issued in the first quarter to a wholesale partner for volume rebates related to 2022 purchases.

Cash used in investing activities reflected capital expenditures of \$5.8 million for the six months ended June 30, 2023 compared to \$26.1 million for the six months ended June 30, 2022. Capital expenditures during the first six months of 2023 primarily consisted of additional investments made in our manufacturing facilities in Utah and Georgia.

Cash provided by financing activities was \$28.9 million during the six months ended June 30, 2023 compared to \$28.4 million during the six months ended June 30, 2022. Financing activities during the first six months of 2023 included \$57.0 million of net proceeds received from the stock offering, offset in part by a \$24.7 million term loan payment, \$2.9 million in other debt related payments, and \$0.4 million of other payments.

Critical Accounting Policies

We discuss our critical accounting policies and estimates in *Management's Discussion and Analysis of Financial Condition and Results of Operations* in our 2022 Annual Report on Form 10-K filed March 22, 2023. There were no significant changes in our critical accounting policies since the end of fiscal 2022.

Available Information

Our website address is www.purple.com. We make available free of charge on the Investor Relations portion of our website, investors.purple.com, our annual report on Form 10-K and Form 10-K/A, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The inclusion of our website address in this report does not include or incorporate by reference into this report any information on our website.

We also use the Investor Relations portion of our website, investors.purple.com, as a channel of distribution of additional Company information that may be deemed material. Accordingly, investors should monitor this channel, in addition to following our press releases, SEC filings and public conference calls and webcasts. The contents of our website shall not be deemed to be incorporated herein by reference.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Risk

Our operating results are subject to risk from interest rate fluctuations on our outstanding borrowings. Our revolving line of credit under our 2020 Credit Agreement bore interest at a variable rate, which exposed us to market risks relating to changes in interest rates. Interest rate risk is highly sensitive due to many factors, including U.S. monetary and tax policies, U.S. and international economic factors and other factors beyond our control. As of June 30, 2023, we had no variable rate debt outstanding as our term loan was paid in full during the first quarter of 2023 and we had no borrowings outstanding under our revolving line of credit.

The proceeds we received from the Term Loans entered into in August 2023 bear interest at variable rates which exposes us to market risks relating to changes in interest rates. On August 7, 2023, we had \$25.0 million of variable rate debt outstanding under our Term Loans. Based on these debt levels, an increase of 100 basis points in the effective interest rates on these outstanding debt amounts would result in an increase in interest expense of approximately \$0.3 million over the next 12 months.

We do not use derivative financial instruments for speculative or trading purposes, but this does not preclude our adoption of specific hedging strategies in the future.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

As of the end of the period covered by this report, under the supervision and with the participation of our management, including our Chief Executive Officer (“CEO”) and Interim Chief Financial Officer (“CFO” and together with the CEO, the “Certifying Officers”), we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Disclosure controls and procedures are controls and other procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Certifying Officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

We acquired Intellibed on August 31, 2022 and are currently in the process of integrating Intellibed into our assessment of internal control over financial reporting. Management’s assessment and conclusions on the effectiveness of our internal control over financial reporting as of June 30, 2023 excludes an assessment of the internal control over financial reporting of Intellibed. We are in the process of implementing our internal control structure at Intellibed and expect that this effort will be completed in fiscal 2023.

Based upon this evaluation, and the above criteria, our CEO and CFO concluded that the Company’s disclosure controls and procedures were effective as of June 30, 2023 at the reasonable assurance level.

Changes in Internal Controls Over Financial Reporting.

There were no changes in our internal control over financial reporting during the quarter ended June 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Company is from time to time involved in various claims, legal proceedings and complaints arising in the ordinary course of business. Please refer to Note 14 — *Commitments and Contingencies* to the condensed consolidated financial statements contained in this report for certain information regarding our legal proceedings.

ITEM 1A. RISK FACTORS

Except as described below, there have been no material changes from the risk factors previously disclosed in our Annual Report on Form 10-K filed with the SEC on March 22, 2023. The disclosure of risks identified below does not imply that the risk has not already materialized.

We may need additional capital to execute our business plan and fund operations and may not be able to obtain such capital on acceptable terms or at all.

In connection with the development and expansion of our business, we expect to incur significant capital and operational expenses. We believe that we can increase our sales and net income by implementing a growth strategy that focuses on (i) increasing our manufacturing efficiency; (ii) increasing our marketing; (iii) expanding our distribution channels; (iv) elevating the premium customer experience of our products; (v) opening additional Purple owned retail showrooms; (vi) expanding our global sales; (vii) engaging global partners to improve distribution efficiencies and cost savings; and (viii) product assortment and category expansion.

Our ability to obtain other capital resources and sources of liquidity may not be sufficient to support future growth strategies. If we are unable to satisfy our liquidity and capital resource requirements, we may have to scale back, postpone or discontinue our growth strategies, which could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain our employees. In addition, we may be forced to restructure our obligations to creditors, pursue work-out options or other protective measures.

While we have access to a revolving asset-based credit facility of up to \$50 million under the ABL Credit Agreement and have borrowed \$25 million of term loans under the Term Loan Credit Agreement our ability to access funds under the ABL Credit Agreement (each a “Revolving Loan” and collectively, the “Revolving Loans”) is subject to certain conditions and restrictive covenants, and there is no guarantee that we will be able to satisfy such conditions and restrictive covenants. For example, we did not satisfy certain financial and performance covenants under our prior credit agreement and were required to amend such credit agreement to avoid non-compliance. To the extent that waivers and amendments are necessary under either of the Credit Agreements, there can be no guarantee that we will be able to obtain waivers or amendments from the applicable Agent and Lenders if, in the future, we are unable to comply with the covenants and other terms of the Credit Agreements. Our failure to satisfy the required conditions under the Credit Agreements or maintain compliance with the financial and performance covenants under the Credit Agreements could result in a default, which would adversely affect our financial condition and results of operations, including, potentially, as a result of acceleration of our outstanding debt. In addition, any default under the Credit Agreements would adversely affect our ability to obtain alternative financing.

Further, our ability to obtain additional capital on acceptable terms or at all is subject to a variety of uncertainties. Adequate alternative financing may not be available or, if available, may only be available on unfavorable terms or subject to covenants that we may not be able to satisfy.

There is no assurance we will obtain the capital we require. As a result, there can be no assurance that we will be able to fund our future operations or growth strategies.

Future equity or debt financings may require us to also issue warrants or other equity securities that are likely to be dilutive to our existing stockholders. For example, on February 13, 2023, we completed an offering of our Class A Shares that increased the number of outstanding Class A Shares from 91,380,323 to 104,780,323. Newly issued securities may include preferences or superior voting rights or may be combined with the issuance of warrants or other derivative securities, which each may have additional dilutive effects. Furthermore, we may incur substantial costs in pursuing future capital and financing, including investment banking fees, legal fees, accounting fees, printing and distribution expenses and other costs. We may also be required to recognize non-cash expenses in connection with certain securities we may issue, such as convertible notes and warrants, which will adversely impact our financial condition. If we cannot raise additional funds on favorable terms or at all, we may not be able to carry out all or parts of our long-term growth strategy, maintain our growth and competitiveness or continue in business.

Anti-takeover provisions in our Second Amended and Restated Certificate of Incorporation, our Third Amended and Restated Bylaws as well as provisions of Delaware law, contain anti-takeover provisions, any of which could delay or discourage a merger, tender offer, or assumption of control of the Company not approved by our Board of Directors that some stockholders may consider favorable.

Provisions of Delaware law, our Second Amended and Restated Certificate of Incorporation, and our Third Amended and Restated Bylaws could hamper a third party's acquisition of us, or discourage a third party from attempting to acquire control of us. You may not have the opportunity to participate in these transactions. These provisions could also limit the price that investors might be willing to pay in the future for equity interests in the Company. These provisions include:

- the right of our Board to elect a director to fill a vacancy created by the expansion of our Board or the resignation, death or removal of a director in certain circumstances, which prevents stockholders from being able to fill vacancies on our Board;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- a prohibition on stockholders calling a special meeting and the requirement that a meeting of stockholders may only be called by members of our Board, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors;
- the requirement that changes or amendments to certain provisions of our certificate of incorporation or bylaws must be approved by holders of at least two-thirds of our common stock; and
- advance notice procedures that stockholders must comply with in order to nominate candidates to our Board or to propose matters to be acted upon at a meeting of stockholders, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

In December 2022, we amended our bylaws to add requirements relating to stockholder nominations of directors, including a requirement that stockholder nominees complete a written questionnaire and that stockholder nominees make themselves available for interviews by our Board upon request.

In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain transactions with stockholders owning 15% or more of our outstanding voting stock or require us to obtain stockholder approval prior to engaging in such transactions. Coliseum collectively holds approximately 44.7% of our outstanding voting stock. Any delay or prevention of a change in control transaction or changes in our Board could adversely affect our ability to execute transactions that are needed to carry out our operations and growth strategies and cause the market price of our common stock to decline.

We may not be able to identify, complete or successfully integrate acquisitions, and any such acquisitions may not achieve the anticipated financial benefits, all of which could have a negative impact on our growth, financial condition, and results of operations.

We may seek to acquire businesses in the future as we encounter acquisition prospects that would complement our current product offerings, increase the size and geographic scope of our operations, or otherwise offer strategic, growth and operating efficiency opportunities. We cannot assure investors that we will be able to identify and acquire acceptable acquisition candidates on terms favorable to us in the future, or that any acquisitions will achieve the anticipated strategic or financial benefits. Even if we do identify opportunities to acquire businesses, we may not be able to consummate such acquisitions due to a number of factors, including lacking access to sufficient capital to fund such acquisitions.

In addition, acquisitions involve numerous risks and uncertainties and may be of businesses in which we lack operational or market experience. The financing for any of these acquisitions could dilute the interests of our stockholders, result in an increase in our indebtedness or both. Future acquisitions could entail numerous risks, including:

- difficulties in integrating acquired technologies, operations or products;
- the difficulties of imposing financial and operating controls on the acquired companies and their management and the potential costs of doing so;
- the potential loss of key employees, customers, suppliers or distributors from acquired businesses and disruption to our direct selling channel;
- diversion of management's attention from our core business;
- the failure to achieve the strategic objectives of these acquisitions;
- increased fixed costs;
- the failure of the acquired businesses to achieve the results we have projected in either the near or long term;
- the assumption of unexpected liabilities, including compliance and litigation risks;
- adverse effects on existing business relationships with our suppliers, sales force or consumers;
- Failure to gain consumer or wholesale market acceptance of acquired brands and products; and
- risks associated with entering markets or industries in which we have limited or no prior experience, including limited expertise in running the business, developing the technology, and selling and servicing the products.

Our failure to successfully complete the integration of any acquired business, or a failure to effectively identify and pursue such acquisitions, could have a material adverse effect on our business, financial condition and operating results.

Our business and our reputation could be adversely affected by the failure to protect sensitive employee, customer and consumer data, or to comply with evolving regulations relating to our obligation to protect such data.

In the ordinary course of our business, we collect and store certain personal information from individuals, such as our customers and suppliers, and we process customer payment card and check information for purchases via our website. In addition, we may share with third-parties personal information we have collected. Cyber-attacks designed to gain access to sensitive information by breaching security systems of large organizations leading to unauthorized release of confidential information have occurred at a number of major U.S. companies despite widespread recognition of the cyber-attack threat and improved data protection methods. Computer hackers may attempt to penetrate our computer system or the systems of third-parties with which we have shared personal information and, if successful, misappropriate personal information, payment card or check information or confidential Company business information. In addition, a Company employee, contractor or other third party with whom we do business may attempt to circumvent our security measures in order to obtain such information and may purposefully or inadvertently cause a breach involving such information. For example, though it did not involve access to or release of personal information, we recently experienced an unauthorized intrusion into one of our vendor's system using a former contractor's credentials that resulted in access to email addresses and an unauthorized email

being sent under a valid Purple email address. Breaches involving any personal information could be more likely to the extent we have any material weakness in internal control over financial reporting related to information technology general controls in the areas of user access and segregation of duties related to certain IT systems that support the Company's financial reporting processes.

We and third parties with which we have shared personal information have been subject to attempts to breach the security of networks, IT infrastructure, and controls through cyber-attack, malware, computer viruses, social engineering attacks, ransomware attacks, and other means of unauthorized access. For example, in 2022, we experienced a spear-phishing attack that resulted in the unauthorized change to a significant vendor's bank account to which we made payments that were lost in part until the scheme was discovered. We expect that this attack will result in costs to us of up to \$250,000. We anticipate that we may, in the future, continue to be subject to these and similar cyber threats. A breach of systems resulting in the unauthorized release of sensitive data could also adversely affect our reputation and lead to financial losses from remedial actions or potential liability, possibly including punitive damages, and could also materially increase the costs we already incur to protect against these risks. In addition, cyber-attacks, such as ransomware attacks, if successful, could interfere with our ability to access and use systems and records that are necessary to operate our business. Such attacks could materially adversely affect our reputation, relationships with customers, and operations and could require us to expend significant resources to resolve such issues. We continue to balance the additional risk with the cost to protect us against a breach. Additionally, while losses arising from a breach may be covered in part by insurance that we carry, such coverage may not be adequate for liabilities or losses actually incurred.

We may be subject to data privacy and data breach laws in the states in which we do business, and as we expand into other countries, we may be subject to additional data privacy laws and regulations. In many states, state data privacy laws (such as the California Consumer Privacy Act), including application and interpretation, are rapidly evolving. The rapidly evolving nature of state and federal privacy laws, including potential inconsistencies between such laws and uncertainty as to their application, adds additional compliance costs and increases our risk of non-compliance. While we attempt to comply with such laws, we may not be in compliance at all times in all respects. Failure to comply with such laws may subject us to fines, administrative actions, and reputational harm.

Our level of indebtedness and related covenants could limit our operational and financial flexibility and adversely affect our business if we breach such covenants and default on such indebtedness.

Under the Credit Agreements, we are subject to a number of affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, in each case, subject to certain exceptions. In particular, we are (i) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in each Credit Agreement, and (ii) required to maintain minimum revolving availability under the ABL Credit Agreement, and, if revolving availability falls beneath a specified amount, a specified Consolidated Fixed Charge Coverage Ratio (as such term is defined in the ABL Credit Agreement). The Loan Parties are also restricted from paying dividends or making other distributions or payments on their capital stock, subject to limited exceptions.

These restrictions may prevent us from taking actions that we believe would be in the best interests of the business and may make it difficult for us to successfully execute our business strategy or effectively compete with companies that are not similarly restricted. If we determine that we need to take any action that is restricted under any Credit Agreement, we will need to first obtain a waiver from the applicable Agent and Lenders. Obtaining such waivers, if needed, may impose additional costs on the Company or we may be unable to obtain such waivers. Our ability to comply with these restrictive covenants in future periods will largely depend on our ability to successfully implement our overall business strategy. The breach of any of these covenants or restrictions could result in a default, which could potentially result in the acceleration of our outstanding debt. In the event of an acceleration of such debt, we could be forced to apply all available cash flows to repay such debt, which could also force us into bankruptcy or liquidation.

In the past, we have been required to negotiate with our lenders to obtain amendments to our prior credit agreement to avoid non-compliance with certain of our covenants thereunder. If we are not able to maintain compliance with our covenants under the Credit Agreements, we may need to seek amendments or waivers to the Term Loan Agreement and ABL Agreement in the future.

To the extent that waivers and amendments under any Credit Agreement are necessary, there can be no guarantee that we will be able to obtain waivers or amendments from the applicable Lenders if, in the future, we are unable to comply with the covenants and other terms of any Credit Agreement. Our failure to satisfy the required conditions under the Credit Agreements, any amendments thereof, or

maintain compliance with the financial and performance covenants under the Credit Agreements could result in a default, which would adversely affect our financial condition and results of operations, including, potentially, as a result of acceleration of our outstanding debt. In addition, any default under would adversely affect our ability to obtain alternative financing, and significantly limit our ability to execute our business strategies.

ITEM 5. OTHER INFORMATION

10b5-1 Trading Plans

During the second quarter of 2023, none of our directors or executive officers adopted or terminated any “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement” (as each term is defined in Item 408(a) of Regulation S-K).

Credit Agreement

On August 7, 2023, the Loan Parties entered into the Term Loan Credit Agreement with the Term Loan Lenders and the Term Loan Agent and consummated the transactions contemplated thereby (the “Callodine Closing”). In connection with the Callodine Closing, the Loan Parties also entered a Term Loan Pledge and Security Agreement as described in greater detail below. The Company is the sole managing member of Purple LLC. Intellibed is a wholly owned subsidiary of Purple LLC.

On August 7, 2023, the Loan Parties also entered into the ABL Credit Agreement with the ABL Lenders the ABL Agent), Swing Line Lender and Letter of Credit Issuer and consummated the transactions contemplated thereby (the “BMO Closing”). In connection with the BMO Closing, the Loan Parties also entered an ABL Pledge and Security Agreement as described in greater detail below.

All defined terms used herein and not otherwise defined herein shall have the meanings set forth in the Term Loan Credit Agreement and the ABL Credit Agreement, as applicable. The Company and Intellibed are guarantors under the Term Loan Credit Agreement and the ABL Credit Agreement.

Term Loan Credit Agreement and Term Loan Pledge and Security Agreement

The Term Loan Credit Agreement provides for up to \$25 million of term loans, with up to \$5 million of incremental Term Loans, subject to certain conditions. Proceeds from the term loan, which were fully drawn at closing, will be used for general corporate purposes.

The borrowing rates under the Term Loan Credit Agreement will be based SOFR, plus a credit spread adjustment of 0.15% per annum, plus 8.5% per annum, with a SOFR floor of 2.0% per annum.

The Term Loans will be repaid at the earlier of (a) a three-year amortization schedule ending on August 7, 2026 or (b) the payment in full of the ABL Credit Agreement. The Term Loans may be prepaid in whole or in part at any time, but subject to a prepayment premium. There may also be mandatory prepayment obligations based on certain asset dispositions, casualty events and extraordinary receipts. Once repaid, no portion of the Term Loans may be reborrowed.

Pursuant to a Pledge and Security Agreement (the “Term Loan Pledge and Security Agreement”), the Loan Parties’ obligations under the Term Loan Credit Agreement are secured by a perfected second-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected first-priority security interest in substantially all of other assets of the Loan Parties, including, without limitation, the intellectual property and equipment of the Loan Parties, subject to certain exceptions.

The Term Loan Credit Agreement provides for customary events of default such as for non-payment and failure to perform or observe covenants. The Term Loan Credit Agreement contains customary indemnifications benefiting the Term Loan Agent and the Term Loan Lenders.

The Term Loan Credit Agreement also contains representations, warranties and certain covenants of the Loan Parties. While any amounts are outstanding under the Term Loan Credit Agreement, the Loan Parties are subject to a number of affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations

or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, each of which are subject to certain exceptions. In particular, the Loan Parties are (i) restricted from incurring additional debt, subject to limited exceptions, as set forth in the Term Loan Credit Agreement, and (ii) required to maintain a minimum revolving loan availability under the ABL Credit Agreement. Each Loan Party is also restricted from paying dividends or making other distributions or payments on its respective capital stock, subject to limited exceptions. If the Loan Parties fail to perform their obligations under these and other covenants, or should any event of default occur, the Term Loans under the Term Loan, together with accrued interest, under the Term Loan Credit Agreement could be declared immediately due and payable.

The representations, warranties and covenants contained in the Term Loan Credit Agreement are made only for purposes of the Term Loan Credit Agreement and as of specific dates; are solely for the benefit of the parties to the Term Loan Credit Agreement; and may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made by each contracting party to the other for the purposes of allocating contractual risk between them that differ from those applicable to investors. Investors should not rely on the representations, warranties and covenants or any description thereof as characterizations of the actual state of facts or condition of any Loan Party, or the Term Loan Lenders, the Term Loan Agent or any of their respective subsidiaries, affiliates, businesses, or stockholders. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Term Loan Credit Agreement, which subsequent information may or may not be fully reflected in public disclosures of the Company or statements by any Loan Party, the Term Loan Agent or the Term Loan Lenders. Accordingly, investors should read the representations and warranties in the Term Loan Credit Agreement not in isolation but only in conjunction with the other information about the Loan Parties, the Term Loan Agent or the Term Loan Lenders and their respective subsidiaries that the respective companies include in reports, statements and other filings made with the SEC.

The foregoing descriptions of the Term Loan Credit Agreement and the Term Loan Pledge and Security Agreement do not purport to be complete and are qualified in their entirety by reference to the Term Loan Credit Agreement and the Term Loan Pledge and Security Agreement, which are attached as Exhibit 10.8 and Exhibit 10.9, respectively, to this report and are incorporated by reference herein.

ABL Credit Agreement and ABL Pledge and Security Agreement

The ABL Credit Agreement provides for up to \$50 million of revolving loans (with subfacilities for Swing Line Loans and the issuance of Letters of Credit), with incremental ABL Loans available up to \$20 million, subject to certain conditions. No funds were drawn under the ABL Credit Agreement at closing. The Company anticipates that any funds drawn from under the ABL Credit Agreement will be used to finance Permitted Acquisitions and for working capital, capital expenditures and other general corporate purposes. Outstanding principal and accrued interest on the ABL Loans shall be repaid on August 7, 2026.

The borrowing rates under the ABL Credit Agreement will accrue on a three-tiered grid based on revolving availability, ranging from (i) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 2.75% per annum to (ii) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 3.25% per annum, with a SOFR floor of 0% per annum.

The ABL Loans under the ABL Credit Agreement may be prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. There may be mandatory prepayment obligations based on certain asset dispositions, casualty events, equity issuances and extraordinary receipts.

Pursuant to a Pledge and Security Agreement (the “ABL Pledge and Security Agreement”), the Loan Parties’ obligations under the ABL Credit Agreement are secured by a perfected first-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected second-priority security interest in substantially all of the other assets of the Loan Parties, subject to certain exceptions.

The ABL Credit Agreement provides for customary events of default such as non-payment and failure to perform or observe covenants. The ABL Credit Agreement contains customary indemnifications benefitting the ABL Agent and the ABL Lenders.

The ABL Credit Agreement also contains representations, warranties and certain covenants of the Loan Parties. The Loan Parties are subject to affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates,

among other customary covenants, in each case, subject to certain exceptions. In particular, the Loan Parties are (i) restricted from incurring additional debt, subject to limited exceptions, as set forth in the ABL Credit Agreement, (ii) if revolving availability under the ABL Credit Agreement is less than a specified amount, required to maintain a minimum Consolidated Fixed Charge Coverage Ratio (as defined in the ABL Credit Agreement), and (iii) required to maintain a specified minimum revolving availability. Each Loan Party is also restricted from paying dividends or making other distributions or payments on its respective capital stock, subject to limited exceptions. If the Loan Parties fail to perform their obligations under these and other covenants, or should any event of default occur, the revolving loan commitments under the ABL Credit Agreement may be terminated and any outstanding ABL Loans and Swing Lien Loans, together with accrued interest, under the ABL Credit Agreement could be declared immediately due and payable and any outstanding Letters of Credit may be required to be cash collateralized.

The representations, warranties and covenants contained in the ABL Credit Agreement are made only for purposes of the ABL Credit Agreement and as of specific dates; are solely for the benefit of the parties to the ABL Credit Agreement; and may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made by each contracting party to the other for the purposes of allocating contractual risk between them that differ from those applicable to investors. Investors should not rely on the representations, warranties and covenants or any description thereof as characterizations of the actual state of facts or condition of any Loan Party, the ABL Agent or the ABL Lenders or any of their respective subsidiaries, affiliates, businesses or stockholders. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the ABL Credit Agreement, which subsequent information may or may not be fully reflected in public disclosures of the Loan Parties or statements by any Loan Party, the ABL Agent or the ABL Lenders. Accordingly, investors should read the representations and warranties in the ABL Credit Agreement not in isolation but only in conjunction with the other information about the Loan Parties, the ABL Agent or the ABL Lenders and their respective subsidiaries that the respective companies include in reports, statements and other filings made with the SEC.

The foregoing descriptions of the ABL Credit Agreement and ABL Pledge and Security Agreement do not purport to be complete and are qualified in their entirety by reference to the ABL Credit Agreement and the ABL Pledge and Security Agreement, which are attached as Exhibits 10.10 and Exhibit 10.11, respectively, to this report and are incorporated by reference herein.

Termination of the 2020 Credit Agreement

In connection with the Company's execution of the Term Loan Agreement and ABL Credit Agreement, the Company terminated its 2020 Credit Agreement. The Company had no outstanding borrowings under the term loan or the revolving line of credit at the time of termination. The termination was accounted for as an extinguishment of debt and \$3.1 million of unamortized debt issuance costs related to the 2020 Credit Agreement will be recorded as a loss on extinguishment of debt in the third quarter of 2023.

ITEM 6. EXHIBITS

Number	Description
3.1	<u>Second Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on November 6, 2019)</u>
3.2	<u>Certificate of Designation of the Preferred Stock of the Company, dated September 26, 2022 (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on September 27, 2022).</u>
3.3	<u>Certificate of Designation of Proportional Representation Preferred Linked Stock of the Company, dated February 14, 2023 (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 14, 2023).</u>
3.4	<u>Certificate of Elimination of the Series A Junior Participating Preferred Stock, dated April 27, 2023 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed April 27, 2023)</u>
3.5	<u>Certificate of Elimination of the Proportional Representation Preferred Linked Stock, dated April 27, 2023 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K (File No. 001-37523) filed April 27, 2023)</u>
3.6	<u>Third Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed April 21, 2023)</u>

4.1	<u>First Amendment to Stockholder Rights Agreement, dated April 27, 2023, by and between Purple Innovation, Inc. and Pacific Stock Transfer Company (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed April 27, 2023)</u>
10.1	<u>Cooperation Agreement between Purple Innovation, Inc. and Coliseum Capital Management, LLC, dated April 19, 2023 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed April 21, 2023)</u>
10.2	<u>Memorandum of Understanding dated April 11, 2013 (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on April 13, 2023).</u>
10.3+	<u>Purple Innovation, Inc. 2023 Short-Term Cash Incentive Plan, dated as of April 13, 2023 (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on April 19, 2023).</u>
10.4+	<u>Form of Restricted Share Unit Agreement (incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on April 19, 2023).</u>
10.5+	<u>Form of Performance-Based Share Unit Agreement (incorporated by reference to Exhibit 99.3 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on April 19, 2023).</u>
10.6	<u>Sixth Amendment to the 2020 Credit Agreement dated May 10, 2023 by and among Purple Innovation, LLC, Purple Innovation, Inc., Intellibed, LLC and KeyBank National Association (incorporated by reference to Exhibit 10.13 to the Company's Quarterly Report on Form 10-Q (File No. 001-37523) filed on May 10, 2023).</u>
10.7+	<u>Purple Innovation, Inc. Amended and Restated 2017 Equity Incentive Plan (incorporated by reference to Exhibit 99.1 to the S-8 (File No. 333-272712) filed with the SEC on June 16, 2023).</u>
10.8*#	<u>Term Loan Credit Agreement dated as of August 7, 2023 between and among Purple Innovation, LLC, Purple Innovation, Inc., Intellibed, LLC, the Term Loan Agent and the Term Loan Lenders.</u>
10.9*#	<u>Term Loan Pledge and Security Agreement dated as of August 7, 2023</u>
10.10*#	<u>ABL Credit Agreement dated as of August 7, 2023 between and among Purple Innovation, LLC, Purple Innovation, Inc., Intellibed, LLC, the ABL Agent, the Swing Line Lender, the Letter of Credit Issuer and the ABL Lenders.</u>
10.11*#	<u>ABL Pledge and Security Agreement dated as of August 7, 2023.</u>
10.12+	<u>Form of Restricted Share Unit Agreement pursuant to the Purple Innovation, Inc. 2017 Incentive Plan (incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K filed April 19, 2023)</u>
31.1*	<u>Certification by Robert T. DeMartini, Chief Executive Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
31.2*	<u>Certification by Bennett L. Nussbaum, Interim Chief Financial Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
32.1*	<u>Certification by Robert T. DeMartini, Chief Executive Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>
32.2*	<u>Certification by Bennett L. Nussbaum, Interim Chief Financial Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File—the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.

* Filed herewith.

+ Indicates management contract or compensatory plan.

Certain schedules and exhibits to this agreement have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted exhibit or schedule will be furnished supplementally to the SEC or its staff upon request.

SIGNATURE

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

PURPLE INNOVATION, INC.

Date: August 9, 2023

By: /s/ Robert T. DeMartini
Robert T. DeMartini
Chief Executive Officer
(Principal Executive Officer)

Date: August 9, 2023

By: /s/ Bennett L. Nussbaum
Bennett L. Nussbaum
Interim Chief Financial Officer
(Principal Financial Officer)

Date: August 9, 2023

By: /s/ George T. Ulrich
George T. Ulrich
VP Accounting and Financial Reporting
(Principal Accounting Officer)

TERM LOAN CREDIT AGREEMENT

Dated as of August 7, 2023

among

PURPLE INNOVATION, LLC,
as a Borrower,

PURPLE INNOVATION, INC.,
as Guarantor,

CERTAIN FINANCIAL INSTITUTIONS,
as Lenders,

and

CALLODINE COMMERCIAL FINANCE, LLC,
as Administrative Agent

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TERM LOAN CREDIT AGREEMENT

This **TERM LOAN CREDIT AGREEMENT** (this “*Agreement*”) is entered into as of August 7, 2023, among PURPLE INNOVATION, LLC, a Delaware limited liability company (the “*Company*” or “*Borrower*” and collectively with any other entities that become a “*Borrower*” hereunder, the “*Borrowers*”), PURPLE INNOVATION, INC., a Delaware corporation (“*Holdings*”), **EACH TERM LOAN LENDER FROM TIME TO TIME PARTY HERETO** (collectively, the “*Term Loan Lenders*” and individually, a “*Term Loan Lender*”), and CALLODINE COMMERCIAL FINANCE, LLC, as Administrative Agent.

Preliminary Statements

A. The Borrowers have requested that the Term Loan Lenders provide a term loan credit facility to the Borrowers to finance their mutual and collective business enterprise.

B. The Term Loan Lenders are willing to provide the term loan credit facility on the terms and conditions set forth in this Agreement.

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

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“ABL Priority Collateral” has the meaning set forth in the Intercreditor Agreement.

“Account” means “accounts” as defined in the UCC.

“Account Debtor” means any Person who is or may become obligated under or on account of any Account, Contractual Obligation, Chattel Paper or General Intangible.

“ACH” means automated clearing house transfers.

“Acquisition” means (a) the acquisition of a controlling Equity Interest or other ownership interest in or Control of another Person, whether by purchase of such Equity Interest or other ownership interest or upon exercise of an option or warrant for, or conversion of securities into, such Equity Interest or other ownership interest, or (b) the acquisition of assets of another Person which constitute all or substantially all of the assets of such Person or of a line or lines of business conducted by such Person, whether in one or a series of related transactions or (c) the merger, consolidation or combination of Holdings, a Borrower or a Subsidiary with another Person (other than (i) in the case of any Subsidiary, a Subsidiary into a Borrower or any other Subsidiary or (ii) in the case of a Borrower, into another Borrower).

“Additional Term Loan Commitment Lender” shall have the meaning specified in Section 2.14(c).

“Adjusted Term SOFR” means the per annum rate equal to the sum of (i) Term SOFR plus (ii) 0.15% (15 basis points); provided, that if Adjusted Term SOFR determined as provided above shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“Administrative Agent” means Callodine Commercial Finance, LLC, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower Agent and the Term Loan Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For the purposes of (i) Section 8.08 and (ii) the proviso to the definition of “Eligible Assignee” only, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent or is an officer or director of the specified Person.

“Agent Indemnitee” has the meaning specified in Section 11.04(c).

“Agent Indemnitee Liabilities” has the meaning specified in Section 11.04(c).

“Agreement” means this Term Loan Credit Agreement.

“Allocable Amount” has the meaning specified in Section 2.15(c)(ii).

“ALTA Survey” means a survey reasonably satisfactory to the Administrative Agent prepared in accordance with the standards adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1997, known as the “Minimum Standard Detail Requirements of Land Title Surveys” and sufficient form to satisfy the requirements any applicable title insurance company to provide extended coverage over survey defects and shall also show the location of all easements, utilities, and covenants of record, dimensions of all improvements, encroachments from any adjoining property, and certify as to the location of any flood plain area affecting the subject Real Property.

“Anti-Corruption Laws” means all Laws of any jurisdiction applicable to a Loan Party or any of their Subsidiaries from time to time targeting or relating to bribery or corruption, including the FCPA and the UK Bribery Act 2010.

“Anti-Money Laundering Laws” means all Laws applicable to a Loan Party or its Subsidiaries related to terrorism financing or money laundering, including Executive Order No. 13224, the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the PATRIOT Act, and the Money Laundering Control Act of 1986.

“Applicable Margin” means 8.50% per annum.

“Applicable Percentage” means in respect of the Term Loan Facility, with respect to any Term Loan Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Loan Facility, represented by (i) on or prior to the Closing Date, the amount of the Term Loan Commitment of such Term Loan Lender at such time and (ii) thereafter, the outstanding principal amount of such Term Loan Lender’s Term Loans at such time, in each case of clauses (i) and (ii), subject to adjustment as provided in Section 2.14. The initial Applicable Percentage of each Term Loan Lender with respect to the Term Loan Facility is set forth opposite the name of such Term Loan Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Term Loan Lender becomes a party hereto, as applicable.

“Approved Fund” means any Fund that is administered or managed by (a) a Term Loan Lender, (b) an Affiliate of a Term Loan Lender or (c) an entity or an Affiliate of an entity that administers or manages a Term Loan Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Term Loan Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“Assumed Indebtedness” means Indebtedness of a Person which is (a) in existence at the time such Person becomes a Subsidiary or a Borrower or (b) assumed in connection with an Investment in or Acquisition of such Person, and which, in each case, (i) has not been incurred or created in connection with, or in anticipation or contemplation of, such Person becoming a Subsidiary or Borrower, (ii) only such Person (or its Subsidiaries so acquired) are obligors with respect to such Indebtedness, (iii) such Indebtedness is not a revolving loan facility; and (iv) such Indebtedness is not secured by any Liens on working capital assets.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

“Audited Financial Statements” means the audited Consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended December 31, 2022, and the related Consolidated statements of income or operations, retained earnings and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

“Auditor” has the meaning specified in Section 7.01(a).

“Availability” has the meaning specified therefor in the Revolving Credit Agreement as in effect on the date hereof or as otherwise amended, amended and restated or otherwise modified in accordance with the terms of the Intercreditor Agreement.

In calculating Availability at any time and for any purpose under this Agreement, the Borrower Agent, on behalf of the Borrowers, shall certify to the Administrative Agent that all accounts payable and Taxes are being paid on a timely basis and consistent with past practices (absent which the Administrative Agent may establish a Reserve therefor).

“Availability Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, and without duplication of any Availability Reserves established by the Revolving Agent under the Revolving Credit Agreement, such reserves and adjustments thereto as the Administrative Agent from time to time determines in its Credit Judgment as being appropriate (a) to reflect the impediments to the Administrative Agent’s ability to realize upon the Eligible Borrowing Base Assets, (b) to reflect sums that any Loan Party may be required to pay under this Agreement or any other Loan Document (including taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay when due, (c) to reflect amounts for which claims may be reasonably expected to be asserted against the Eligible Borrowing Base Assets or the Administrative Agent or the Term Loan Lenders with respect to the Loan Documents, (d) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party or (e) to reflect that a Default or Event of Default exists. Without limiting the generality of the foregoing but subject to the Administrative Agent’s Credit Judgment, Availability Reserves may include (but are not limited to) (i) Rent and Charge Reserves; (ii) the Dilution Reserve; (iii) [reserved], (iv) Wage Claim Reserves, (v) customs duties, and other costs to release Inventory which is being imported into the United States; (vi) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, and other Taxes (in all cases which have not been paid) which might have priority over the interests of the Administrative Agent in the Eligible Borrowing Base Assets; (vii) any other liabilities not specifically addressed herein that are or may become secured by Liens on the Collateral (including Permitted Liens) which might have priority over the Liens or interests of the Administrative Agent in the Collateral; (viii) reserves for any royalty or other compensation owing to any Person with respect to Eligible Intellectual Property or any Intellectual Property related to Borrowing Base Assets; (ix) reserves with respect to the salability of Eligible Inventory or which reflect such other factors as affect the market value of the Eligible Inventory, including obsolescence, seasonality, Shrink; vendor chargebacks, imbalance, change in Inventory character, composition or mix, markdowns and out of date and/or expired Inventory and (x) reserves which the Administrative Agent deems necessary in its Credit Judgment to address the adverse results of any audit or appraisal performed by or on behalf of the Administrative Agent in accordance with this Agreement from time to time (to the extent such adverse results are not reflected in the NOLV of Eligible Inventory, Eligible In-Transit Inventory and Eligible Machinery and Equipment or the FLV of Eligible Intellectual Property).

“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 which 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.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

“Beneficial Ownership Regulation” means 31 C.F.R. § 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 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”.

“BHC Act Affiliate” has the meaning specified in Section 11.21(b).

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers or board of directors or sole member or manager of such Person or any Person or any committee thereof duly authorized to act on behalf of such board, (c) in the case of any partnership, the Board of Directors of a general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

“Borrower Agent” has the meaning specified in Section 2.15(g).

“Borrowers” has the meaning specified in the introductory paragraph hereto.

“Borrowing Base” means, at any time of calculation, an amount equal to:

(a) the Value of Eligible Accounts (less all cash received but not yet applied in respect of such Eligible Accounts) multiplied by 10%; plus

(a) the face amount of Eligible Credit Card Receivables multiplied by 10%; plus

(b) the NOLV of Eligible Inventory multiplied by (x) from the Closing Date to but not including the first anniversary thereof, 10% and (y) thereafter, 5%; plus

(c) the NOLV of Eligible In-Transit Inventory, multiplied by (x) from the Closing Date to but not including the first anniversary thereof, 10% and (y) thereafter, 5%; provided that in no event shall amounts advanced under the Borrowing Base pursuant to this clause (d) exceed (i) from the Closing Date to but not including the first anniversary thereof, \$500,000 and (ii) thereafter, \$250,000; plus

(d) the NOLV of Eligible Machinery and Equipment multiplied by 65%; plus

(e) the FLV of Eligible IP multiplied by 60%; minus

(f) the amount of all Availability Reserves.

The term “Borrowing Base” and the calculation thereof shall not include any assets or property acquired in an Acquisition or otherwise outside the ordinary course of business unless (x) if so required by the Administrative Agent, the Administrative Agent has conducted or received Field Exams and appraisals reasonably required by it (with results reasonably satisfactory to the Administrative Agent) and (y) the Person owning such assets or property shall be a (directly or indirectly) wholly-owned Domestic Subsidiary of the Company and have become a Borrower.

“Borrowing Base Assets” means all assets of the Borrowers of the type included in the Borrowing Base, regardless of eligibility thereof.

“Borrowing Base Certificate” means a certificate, in the form of Exhibit D hereto and otherwise in satisfactory to Administrative Agent, by which Borrowers certify calculation of the Borrowing Base and the Revolving Borrowing Base.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located.

“Callodine” means Callodine Commercial Finance, LLC.

“Capital Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Secured Parties during the continuance of an Event of Default or in connection with the Payment in Full, as collateral for any Obligations that are due or may become due, cash or deposit account balances or, if the Administrative Agent shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following types of property, to the extent owned by the Company or any of its Subsidiaries free and clear of all Liens (other than Liens created under the Security Instruments):

(a) cash, denominated in Dollars;

(b) readily marketable direct obligations of the government of the United States or any agency or instrumentality thereof, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by the government of the United States or any state or municipality thereof, in each case so long as such obligation has an investment grade rating by S&P and Moody’s;

(c) commercial paper rated at least P-1 (or the then equivalent grade) by Moody’s and A-1 (or the then equivalent grade) by S&P, or carrying an equivalent rating by a nationally recognized rating agency if at any time neither Moody’s nor S&P shall be rating such obligations;

(d) insured certificates of deposit or bankers’ acceptances of, or time deposits with any Revolving Lender or with any commercial bank that (i) is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in the first portion of clause (c) above, (iii) is organized under the laws of the United States or of any state thereof and (iv) has combined capital and surplus of at least \$500,000,000;

(e) readily marketable general obligations of any corporation organized under the laws of any state of the United States of America, payable in the United States of America, expressed to mature not later than twelve months following the date of issuance thereof and rated A or better by S&P or A3 or better by Moody’s; and

(f) readily marketable shares of investment companies or money market funds that, in each case, invest solely in the foregoing Investments described in clauses (a) through (e) above.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“CFC” has the meaning specified in the definition of “Excluded Subsidiary”.

“CFCHC” has the meaning specified in the definition of “Excluded Subsidiary”.

“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, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

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

(a) Other than the Common B shares issued and outstanding on the Closing Date (except to the extent any are repurchased, retired or otherwise acquired pursuant to Section 8.06(c)), Holdings shall fail to own and control, beneficially and of record/directly or indirectly, 100% of the issued and outstanding equity interests of the Company; or

(b) The Common B Holders assign or transfer any of the Equity Interests of the Company to any Person other than as permitted under the Organization Documents of Holdings as in effect on the Closing Date or as modified as agreed to by the Administrative Agent and the Required Lenders; or

(c) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of Holdings 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 the “beneficial owner” (as defined in Rules 13d-4 and 13d-6 under the Exchange Act, 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 (such right, an “option right”), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the Equity Interests of Holdings on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any option right); or

(d) during any period of 24 consecutive months beginning on the Closing Date, a majority of the members of the board of directors or other equivalent governing body of Holdings cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(e) the Company shall fail to own and control, beneficially and of record (directly or indirectly), 100% of the issued and outstanding Equity Interests of each of its Subsidiaries, except where such failure is the result of a transaction permitted under the Loan Documents; or

(f) any “change of control” or similar event occurs under the Organization Documents of Holdings or any other Loan Party or under any Material Contract to which Holdings or any other Loan Party is a party.

“Closing Date” means the first date all the conditions precedent in Section 5.01 are satisfied or waived in accordance with Section 11.01 (or, in the case of Section 5.01(b), waived by the Person entitled to receive the applicable information).

“Code” means the Internal Revenue Code of 1986.

“Collateral” means, collectively, certain property of the Loan Parties or any other Person in which the Administrative Agent or any Secured Party is granted a Lien under any Security Instrument as security for all or any portion of the Obligations or any other obligation arising under any Loan Document.

“Commitment” means a 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.

“Common B Holders” means the holders of Common B shares of Holdings and Class B Units of Borrower. As of the Closing Date the Common B Holders are set forth on Schedule 1.02 hereto.

“Communication” means this Agreement, any Loan Document and any document, amendment, waiver, forbearance, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document (including any Assignment and Assumption).

“Company” has the meaning specified in the introductory paragraph hereto.

“Compliance Certificate” means a certificate substantially in the form of Exhibit B.

“Concentration Account” has the meaning specified in Section 4.04(b).

“Conforming Changes” means, with respect to Term SOFR or any Term SOFR Successor Rate, the use, administration, adoption or implementation of any technical, administrative or operational changes (including changes to the definition of “Prime Rate,” the definition of “Business Day,” 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, and other technical, administrative or operational matters) that 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 Administrative Agent 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 the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

“Consolidated Capital Expenditures” means, with respect to Holdings and its Subsidiaries on a Consolidated basis, for any period the sum of (without duplication) all expenditures (whether paid in cash or accrued as liabilities) by Holdings or any Subsidiary during such period for items that would be classified as “property, plant or equipment” or comparable items on the Consolidated balance sheet of Holdings and its Subsidiaries, including without limitation all transactional costs incurred in connection with such expenditures provided the same have been capitalized; provided that Consolidated Capital Expenditures shall exclude any capital expenditures (a) financed with Indebtedness permitted hereunder other than Loans, (b) made with (i) Net Cash Proceeds from any Disposition described in Section 8.05(b) or (ii) proceeds of insurance arising from any casualty or other insured damage or from condemnation or similar awards with respect to any property or asset, in each case, to the extent such proceeds are reinvested within 180 days of receipt thereof, (c) constituting any portion of the purchase price of an Permitted Acquisition which is accounted for as a capital expenditure or (d) which is required to be reimbursed by a third-party pursuant to an enforceable contract obligation and is reimbursed within 180 days of the incurrence of such capital expenditure.

“Consolidated EBITDA” means, for any period, Consolidated Net Income for such period; plus, (a) to the extent deducted in determining such Consolidated Net Income for such period, without duplication, (i) Consolidated Interest Charges (net of interest income

for such period of Holdings and its Subsidiaries), plus (ii) federal, state, local and foreign income tax expense for such period, net of income tax credits, plus (iii) depreciation and amortization, plus (iv) non-cash compensation expense, or other non-cash expenses or charges, arising from the granting of stock options, restricted stock, stock appreciation rights or similar equity arrangements, plus (v) non-cash expenses or losses and other non-cash charges incurred (excluding any non-cash charges representing an accrual of, or reserve for, cash charges to be paid within the next twelve months and reduced by any cash payments made during such period in respect of such non-cash items added back in a prior period); plus (vi) expenses of up to \$4,000,000 incurred in connection with the Transaction, plus (vii) transaction expenses (other than depreciation and amortization expenses) of up to \$4,000,000 during the term of this Agreement incurred in connection with any Acquisition, Investment or Disposition permitted hereunder or the defense of any ownership or control take-over; plus (viii) proceeds of business interruption insurance received in cash during such period; plus (ix) non-recurring and unusual out-of-pocket costs and charges in an amount not to exceed \$2,000,000 per year and \$6,000,000 in the aggregate; minus (b) to the extent included in determining Consolidated Net Income for such period, without duplication, non-cash income, gains or profits (including, without limitation, non-cash extraordinary gains), in each case as determined for Holdings and its Subsidiaries on a Consolidated basis and subject to applicable Pro Forma Adjustments.

“Consolidated Fixed Charge Coverage Ratio” means the ratio, determined on a Consolidated basis for Holdings and its Subsidiaries for the applicable Measurement Period, of (a) Consolidated EBITDA minus Consolidated Capital Expenditures to (b) Consolidated Fixed Charges.

“Consolidated Fixed Charges” means, for any period, for Holdings and its Subsidiaries on a Consolidated basis, the sum of, without duplication, (a) Consolidated Interest Charges paid or required to be paid in cash during such period, (b) all scheduled and mandatory principal repayments made or required to be made of Consolidated Funded Indebtedness during such period (excluding (i) any such payments to the extent constituting a refinancing of such Consolidated Funded Indebtedness through the incurrence of additional Indebtedness otherwise expressly permitted under Section 8.01 and (ii) repayments of Revolving Loans), (c) the aggregate amount of federal, state, local and foreign income taxes paid in cash, in each case, of or by Holdings and its Subsidiaries during such period, and (d) all Restricted Payments (excluding payments made pursuant to Section 8.06(e)) in cash during such period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for Holdings and its Subsidiaries on a Consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under standby and commercial letters of credit (excluding the undrawn amount thereof), bankers’ acceptances, bank guaranties (excluding the amounts available thereunder as to which demand for payment has not yet been made), surety bonds (excluding the amounts available thereunder as to which demand for payment has not yet been made) and similar instruments (excluding the amounts available thereunder as to which demand for payment has not yet been made), (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable arising in the Ordinary Course of Business being paid on a timely basis and consistent with past practices), (e) Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than Holdings or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which Holdings or a Subsidiary is a general partner or joint venturer, to the extent such Indebtedness is recourse to Holdings or such Subsidiary.

“Consolidated Interest Charges” means, with respect to Holdings and its Subsidiaries for any period ending on the date of computation thereof, the gross interest expense of Holdings and its Subsidiaries, including without limitation (a) the current amortized portion of all fees (including fees payable in respect of any Swap Contract in the nature of an interest rate hedge and all fees payable in respect of any letter of credit) payable in connection with the incurrence of Indebtedness to the extent included in gross interest expense and (b) the portion of any payments made in connection with Capital Leases allocable to interest expense, all determined on a Consolidated basis; provided however, that Consolidated Interest Charges shall include the amount of payments in respect of Synthetic Lease Obligations that are in the nature of interest.

“Consolidated Net Income” means, for any period, for Holdings and its Subsidiaries on a Consolidated basis, the net income after taxation of Holdings and its Subsidiaries for that period excluding (a) net losses or gains realized in connection with (i) any sale, lease, conveyance or other disposition of any asset (other than in the Ordinary Course of Business), or (ii) repayment, repurchase or redemption of Indebtedness, and (b) extraordinary or nonrecurring gain or income (or expense), including, any compensation charge

incurred in connection with the Transactions; provided that there shall be excluded from Consolidated Net Income, without duplication, the net income of (x) any Person that is not a Subsidiary or that is accounted for by the equity method of accounting to the extent of the amount of dividends or distributions are not actually paid to the Company or a Subsidiary in cash, (y) any Person in which any other Person (other than the Company or a Subsidiary) has an ownership interest, except to the extent of the amount of dividends or other distributions actually paid in cash to the Company or a Subsidiary by such Person during such period and (z) any Person the ability of which to make Restricted Payments is restricted by any agreement or Organization Document, except to the extent of the amount of dividends or other distributions actually paid in cash to Holdings or a Subsidiary by such Person during such period.

“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 the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a 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, Securities Account or Commodity Account, an agreement, in form and substance satisfactory to the Administrative Agent, among the Administrative Agent, the Revolving Agent (if applicable), the financial institution or other Person at which such account is maintained and the Loan Party maintaining such account, effective to grant “control” (as defined under the applicable UCC) over such account to the Administrative Agent.

“Controlled Account” means each Controlled Deposit Account, Controlled Securities Account and Controlled Commodities Account.

“Controlled Account Bank” means each bank, securities intermediary or other financial institution with whom Deposit Accounts or Securities Accounts of any of the Loan Parties are maintained and with whom a Control Agreement has been, or is required to be, executed in accordance with the terms hereof.

“Controlled Commodities Account” means each Commodities Account (including all funds on deposit therein) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with an intermediary approved by the Administrative Agent.

“Controlled Deposit Account” means each Deposit Account (including all funds on deposit therein) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a financial institution approved by the Administrative Agent.

“Controlled Persons” means, with respect to any Person, (a) its Subsidiaries and Affiliates, (b) its officers, directors, employees and agents and (c) the officers, directors, employees and agents of such Subsidiaries and Affiliates.

“Controlled Securities Account” means such Securities Account (including all Securities or Investment Property deposited or credited thereto) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a financial institution approved by the Administrative Agent.

“Core Business” means any material line of business conducted by Holdings and its Subsidiaries as of the Closing Date and any business directly related thereto.

“Cost” means with respect to Inventory, the lower of (i) cost (as reflected in the general ledger of such Person) and (ii) market value, in each case, determined in accordance with GAAP calculated on a first-in, first-out basis and in accordance with the Loan Parties’ accounting practices as in effect on the Closing Date.

“Covered Entity” has the meaning specified in Section 11.21(b).

“Credit Card Agreements” means all agreements now or hereafter entered into by any Borrower or any Guarantor for the benefit of any Borrower with respect to the processing and/or payment to any Borrower of the proceeds of any credit card charges and debit card charges (or similar payments) for sales made by such Loan Party, in each case with any Credit Card Issuer or any Credit Card Processor, including, but not limited to, the agreements set forth on Schedule 6.19 hereto.

“Credit Card Issuer” means any person (other than a Borrower or other Loan Party) who issues or whose members issue credit cards or provides similar financing to Borrower’s customers, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche, Affirm Inc., PayPal, Inc., Shopify Inc. and other non-bank credit or debit cards approved by the Administrative Agent (which consent will not be unreasonably withheld or delayed).

“Credit Card Processor” means any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower’s sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

“Credit Card Notifications” has the meaning provided in Section 4.02(c).

“Credit Card Receivables” means each “payment intangible” (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Loan Party resulting from charges by a customer of a Loan Party on credit or debit cards issued by such Credit Card Issuer in connection with the sale of goods by a Loan Party, or services performed by a Loan Party, in each case in the ordinary course of its business.

“Credit Judgment” means, with reference to the Administrative Agent, a determination made in good faith using reasonable business judgment (from the perspective of a secured, asset-based lender).

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

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would unless cured or waived be an Event of Default.

“Default Rate” means an interest rate equal to the interest rate (including the Applicable Margin) otherwise applicable to the Term Loans plus two percent (2%) per annum.

“Default Right” has the meaning specified in Section 11.21(b).

“Designated Jurisdiction” means, at any time, any country, region or territory which is itself the target of Sanctions broadly restricting or prohibiting dealings with such country, region or territory.

“Dilution Percent” means the percent, for the most recently ended period of twelve (12) consecutive months, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts for such period, divided by (b) gross sales for such period.

“Dilution Reserve” means, at any date of determination, (a) the percentage amount, if any, by which the Dilution Percent exceeds 5.0% times (b) the amount of Eligible Accounts of the Borrowers.

“Direct Foreign Subsidiary” means a Subsidiary, other than a Domestic Subsidiary that is not a CFCHC, a majority of whose Voting Equity Interests are owned by the Company or a Domestic Subsidiary.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including by Division, any sale and leaseback transaction, any casualty or condemnation or otherwise) of any property (including any Equity Interest), or part thereof, by any Person, and including any sale, assignment, transfer, forgiveness, write-off or other disposal, with or without recourse, of any Investment, notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interest” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 180 days after the Maturity Date, (b) is convertible into or exchangeable for debt securities (unless only occurring at the sole option of the issuer thereof), (c) (i) contains any repurchase obligation that may come into effect prior to, (ii) requires cash dividend payments (other than taxes) prior to, or (iii) provides the holders thereof with any rights to receive any cash upon the occurrence of a change of control or sale of assets prior to, in each case, the date that is 180 days after the Maturity Date; provided, however, that (i) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by the Company or one of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, resignation, death or disability and (ii) any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of an Equity Interest that is not a Disqualified Equity Interest, such Equity Interests shall not be deemed to be Disqualified Equity Interests and (iii) only the portion of such Equity Interests which so matures or is so mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Equity Interests.

“Division” means the creation of one or more new limited liability companies by means of any statutory division of a limited liability company pursuant to any applicable limited liability company act or similar statute of any jurisdiction. “Divide” shall have the corresponding meaning.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States (but excluding any territory or possession thereof).

“Dominion Trigger Period” means the period (a) commencing on the day that (i) an Event of Default occurs and is continuing or (ii) Availability is less than the greater of (x) 17.5% of the Maximum Revolving Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$12,500,000 and (b) continuing until the date that during the previous sixty (60) consecutive days, (i) no Event of Default has existed and (ii) Availability has been greater than the greater of (x) 17.5% of the Maximum Revolving Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$12,500,000; provided however, that a Dominion Trigger Period may not be cured as contemplated by clause (b) more than one (1) time in any fiscal year.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which 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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Record” means a record created, generated, sent, communicated, received, or stored by electronic means.

“Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the Electronic Record.

“Eligible Accounts” means Accounts (other than Credit Card Receivables) due to a Borrower that are determined by the Administrative Agent, in its Credit Judgment, to be Eligible Accounts. Except as otherwise agreed by the Administrative Agent, none of the following shall be deemed to be Eligible Accounts:

(a) Accounts that are not fully earned by performance (or otherwise represent a progress billing or pre-billing) or not evidenced by an invoice which has been delivered to the applicable Account Debtor;

(b) (i) Accounts (other than those owing by Mattress Firm, Inc., Conn Appliances, Inc. (doing business as Conn’s Home Plus), Perez Mattress Co. (doing business as Mattress Firm), North Dakota Mattress Ventures LLC, OK Mattress Venture, D. Noblin, Inc. (doing business as Mattress Firm), Power of One LLC (doing business as Mattress Firm), Dakota Mattress Ventures LLC, JC Penny Company Inc., Mattress Warehouse, LLC, MORE FURNITURE FOR LESS, INC., Big Sky Mattress LLC, Sam’s Club and Hammacher Schlemmer and their respective Affiliates) that have been outstanding for more than ninety (90) days from the invoice date or more than sixty (60) days past the original due date whichever comes first and (ii) Accounts owing by Mattress Firm, Inc., Conn Appliances, Inc. (doing business as Conn’s Home Plus), Perez Mattress Co. (doing business as Mattress Firm), North Dakota Mattress Ventures LLC, OK Mattress Venture, D. Noblin, Inc. (doing business as Mattress Firm), Power of One LLC (doing business as Mattress Firm), Dakota Mattress Ventures LLC, JC Penny Company Inc., Mattress Warehouse, LLC, MORE FURNITURE FOR LESS, INC., Big Sky Mattress LLC, Sam’s Club and Hammacher Schlemmer or any of their respective Affiliates that have been outstanding for more than one-hundred and twenty (120) days from the invoice date or more than ninety (90) days past the original due date whichever comes first;

(c) Accounts due from any Account Debtor, 50% of whose Accounts are otherwise ineligible under the terms clause (b) above;

(d) Accounts with respect to which (i) any representation or warranty set for in any Loan Document with respect thereto is not true and correct in all material respects, (ii) a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Permitted Liens described in clauses (a) and (o) of Section 8.02) or (iii) the applicable Account Debtor has not been instructed to (or does not in fact) remit payment to a deposit account of a Borrower subject to a Control Agreement;

(e) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, offset or chargeback;

(f) Accounts which (i) do not arise out of a sale of goods or rendition of services in the ordinary course of business, (ii) do not arise upon credit terms usual to the business of the Borrowers or (iii) are not payable in Dollars;

(g) Accounts (i) upon which a Borrower’s right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever, including cash on delivery and cash in advance transactions or (ii) as to which a Borrower is not able to bring suit or otherwise enforce its remedies against the related Account Debtor through judicial process;

(h) Accounts which are owed by (i) any other Loan Party or (ii) any Affiliate which is not a Loan Party;

(i) Accounts for which all material consents, approvals or authorizations of, or registrations or declarations with any Governmental Authority required to be obtained, effected or given in connection with the performance of such Account by the Account Debtor or in connection with the enforcement of such Account by the Administrative Agent have not been duly obtained, effected or given or are not in full force and effect;

(j) Accounts due from an Account Debtor which is the subject of any bankruptcy, insolvency or similar proceeding under any Debtor Relief Laws, has had a trustee or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;

(k) Accounts due from any Governmental Authority, except to the extent that the subject Account Debtor is the federal government of the United States of America and has complied with the Federal Assignment of Claims Act of 1940 and any similar state legislation;

(l) Accounts (i) owing from any Account Debtor that is also a supplier to or creditor of a Borrower unless such Person has waived any right of setoff in a manner reasonably acceptable to the Administrative Agent but only to the extent of the aggregate amount

of such Borrower's liability to such Account Debtor, (ii) to the extent representing any manufacturer's or supplier's allowances, credits, discounts, incentive plans or similar arrangements entitling such Borrower to discounts on future purchase therefrom, (iii) to the extent constituting amounts owed with respect to loans or advances, or (iv) to the extent relating to payment of interest, fees or late charges;

(m) Accounts arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return, setoff or charge back;

(n) Accounts arising out of sales to any Account Debtor organized or having its principal office or substantially all assets outside the United States or Canada unless either (i) such Accounts are fully backed by an irrevocable letter of credit on terms, and issued by a financial institution, acceptable to the Administrative Agent and such irrevocable letter of credit is in the possession of the Administrative Agent, or (ii) such Accounts are supported by credit insurance on terms and from providers acceptable to the Administrative Agent, including naming the Administrative Agent as an additional insured and loss payee;

(o) Accounts that are evidenced by a judgment, Instrument or Chattel Paper;

(p) Accounts due from (i) an Account Debtor and its Affiliates (other than Mattress Firm, Inc. and its Affiliates), the aggregate of which Accounts due from such Account Debtor and its Affiliates represents more than 20% of all then outstanding Accounts owed to the Borrowers, but only to the extent of such excess and (ii) Mattress Firm, Inc. and its Affiliates, the aggregate of which Accounts due from Mattress Firm, Inc. and its Affiliates represents more than 50% of all then outstanding Accounts owed to the Borrowers, but only to the extent of such excess;

(q) Accounts that remain open after the applicable Account Debtor has made a partial payment in respect of the applicable invoice (whether or not the applicable Account Debtor has provided an explanation for such partial payment);

(r) Accounts where the applicable Account Debtor tendered a check or other item of payment in full or partial satisfaction and such check or other item of payment has been returned by the financial institution on which it is drawn; or

(s) Accounts for which payment has been received by the applicable Borrower but such payment has not been applied to the applicable Account.

"Eligible Assignee" means (a) a Term Loan Lender or any of its Affiliates; (b) an Approved Fund; and (c) any other Person (other than a natural person) approved by (i) the Administrative Agent (such approval not to be unreasonably withheld or delayed), and (ii) unless an Event of Default has occurred and is continuing, the Borrower Agent (such approval not to be unreasonably withheld or delayed); provided that, notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party or any of the Loan Parties' Affiliates.

"Eligible Borrowing Base Assets" means all Eligible Inventory, Eligible Accounts, Eligible Credit Card Receivables, Eligible In-Transit Inventory, Eligible Intellectual Property and Eligible Machinery and Equipment.

"Eligible Credit Card Receivables" means at the time of any determination thereof, each Credit Card Receivable that is acceptable and satisfies the criteria set forth below at the time of creation and continues to meet the same at the time of such determination, as determined by the Administrative Agent with respect to the Borrowing Base in its Credit Judgment, such Credit Card Receivable (i) has been earned by performance (including, delivery of product) and represents the bona fide amounts due to a Borrower from a Credit Card Issuer or Credit Card Processor, and in each case originated in the ordinary course of business of such Borrower, and (ii) in each case is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (j) below. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, such Credit Card Receivable shall indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Receivable shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower may be obligated to rebate to a customer, a Credit Card Issuer or Credit Card Processor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Credit Card Receivable but not yet applied by the Loan Parties to reduce the amount of such Credit Card Receivable. Except as otherwise agreed by

the Administrative Agent in its Credit Judgment, any Credit Card Receivable included within any of the following categories shall not constitute an Eligible Credit Card Receivable:

- (a) Credit Card Receivables which do not constitute a “payment intangible” (as defined in the UCC);
- (b) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale;
- (c) Credit Card Receivables (i) that are not subject to a perfected first-priority security interest in favor of the Administrative Agent, or (ii) with respect to which a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Permitted Liens described in clauses (a) or (o) of Section 8.02);

(d) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (but only to the extent of such claim, counterclaim, offset or chargeback);

(e) Credit Card Receivables as to which the Credit Card Issuer or Credit Card Processor has the right under certain circumstances to require a Loan Party to repurchase the Credit Card Receivables from such Credit Card Issuer or Credit Card Processor;

(f) Credit Card Receivables due from a Credit Card Issuer or Credit Card Processor which is the subject of any bankruptcy or insolvency proceedings or is a Sanctioned Person;

(g) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable Credit Card Issuer or Credit Card Processor with respect thereto;

(h) Credit Card Receivables which do not conform in all material respects to all representations, warranties or other provisions in the Loan Documents relating to Credit Card Receivables (or to the extent such representations, warranties or other provisions are qualified by materiality or Material Adverse Effect, then in all respects);

(i) Credit Card Receivables which the Administrative Agent in its Credit Judgment determines to be uncertain of collection due an adverse change in the financial condition or prospects of the Credit Card Issuer or Credit Card Processor obligated in respect of such Credit Card Receivables; or

(j) Credit Card Receivables acquired in a Permitted Acquisition, unless and until the Administrative Agent has completed or received (i) a Field Examination with respect to such Credit Card Receivables, and otherwise agrees in its Credit Judgment that such Credit Card Receivables shall be deemed Eligible Credit Card Receivables, and (ii) such other due diligence as the Administrative Agent may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent.

“Eligible In-Transit Inventory” means, as of any date of determination thereof, without duplication of other Eligible Inventory, Inventory:

(a) Which has been shipped from a vendor outside the continental United States for receipt by a Borrower within (x) at any time, other than during an In-Transit Trigger Period, fifty (50) days, and (y) during an In-Transit Trigger Period, thirty (30) days, in each case, of the date of determination, but which has not yet been delivered to a Borrower;

(b) For which the purchase order is in the name of a Borrower and title has passed to such Borrower;

(c) which is (i) subject to an imported goods agreement, customs broker agreement or similar agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which, among other things, the customs broker, logistics provider or other applicable third party having control over the Inventory agrees to act as agent and bailee for the benefit of the Administrative Agent and act solely upon the instructions of the Administrative Agent upon notice by the Administrative Agent and (ii) as to which the vendor has delivered a compliance letter reasonably satisfactory to the Administrative Agent;

(d) evidenced by (i) if an In-Transit Trigger Period is in effect and if required by the Administrative Agent, a tangible negotiable document of title, all originals of which have been delivered to the Administrative Agent or the applicable customs broker as agent for the Administrative Agent or (ii) if no In-Transit Trigger Period is in effect, a sea way bill of lading or similar document providing for the right to take possession of the Inventory, in each case under clauses (i) and (ii) above, that reflects a Borrower as consignee or, if requested by the Administrative Agent after the occurrence of an Event of Default, names the Administrative Agent as consignee;

(e) as to which no vendor has asserted any right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory, or with respect to whom any Borrower is in default of any obligations;

(f) which is shipped by a common carrier that is not affiliated with the vendor;

(g) which is insured to the reasonable satisfaction of the Administrative Agent; and

(h) which otherwise would constitute Eligible Inventory.

“Eligible Inventory” means Inventory of a Borrower that is determined by the Administrative Agent, in its Credit Judgment, to be Eligible Inventory. Except as otherwise agreed by the Administrative Agent, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto;

(b) Inventory that does not consist of (i) finished goods readily saleable in the Ordinary Course of Business, or (ii) raw materials;

(c) Inventory that does not comply with each of the covenants, representations and warranties respecting Inventory made by the Borrowers in the Loan Documents;

(d) Inventory that is leased by or is on consignment to a Borrower;

(e) Inventory that is not located in the United States of America (excluding territories or possessions of the United States);

(f) Inventory that is not at a location that is owned by a Borrower, provided, however, that Inventory that is located on leased premises or in the possession of a warehouseman, bailee, processor, repairman, mechanic or similar other Person in the ordinary course of business shall not be excluded from Eligible Inventory under this clause (f) so long as the lessor or such Person possessing such Inventory has delivered a Lien Waiver to the Administrative Agent or, if elected by the Administrative Agent, an appropriate Rent and Charges Reserve has been established;

(g) Inventory held at any location (owned or a third-party location) with an aggregate Cost of Inventory at such location of less than \$40,000, unless approved by the Administrative Agent;

(h) Inventory that is in transit, except between locations of Borrowers (or between locations of Borrowers and processors or vendors in the Ordinary Course of Business);

(i) Inventory that is comprised of goods which (i) are damaged, defective, “seconds” or otherwise unmerchantable, (ii) have been returned or are to be returned to the vendor or (iii) are discontinued products, obsolete or slow moving;

(j) Inventory consisting of spare parts;

(k) Inventory consisting of promotional, marketing, packaging and shipping materials or supplies used or consumed in the Borrowers’ business and other similar non-merchandise categories;

(l) Inventory that is not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale;

(m) Inventory that is subject to any warehouse receipt, bill of lading or negotiable Document that has not been issued to or in the name of the Administrative Agent;

(n) Inventory consisting of or containing Hazardous Materials;

(o) Inventory that is not subject to a perfected first priority Lien in favor of the Administrative Agent (subject only to Revolving Liens and Permitted Liens set forth in clauses (c), (d), or (n) of Section 8.02 hereof);

(p) Inventory that is not insured in compliance with the provisions of this Agreement and the other Loan Documents;

(q) Inventory not on a perpetual schedule;

(r) Inventory that consists of bill and hold goods or goods that have been sold but not yet delivered; or

(s) Inventory that is subject to any License or other arrangement that restricts such Borrowers' or the Administrative Agent's right to dispose of such Inventory, unless (i) Administrative Agent has received an appropriate Lien Waiver; and (ii) such Borrowers have not received notice of a dispute in respect of any such License or other arrangement.

"Eligible Intellectual Property" means Intellectual Property of a Borrower deemed by the Administrative Agent in its Credit Judgment to be eligible for inclusion in the calculation of the Borrowing Base, in each case that, except as otherwise agreed by the Administrative Agent, complies with the following criteria:

(a) such Intellectual Property is validly registered with the United States Copyright Office or the United States Patent and Trademark Office, as applicable;

(b) a Borrower owns such Intellectual Property, free and clear of any Liens other than Liens granted to the Administrative Agent, Revolving Liens, and other Permitted Liens having priority by operation of applicable Law over the Lien of the Administrative Agent;

(c) such Intellectual Property is subject to a perfected first-priority security interest in favor of the Administrative Agent (other than Permitted Liens having priority by operation of applicable Law over the Lien of the Administrative Agent);

(d) such Loan Party is in compliance in all material respects (subject to any materiality requirements set forth therein) with the representations, warranties and covenants set forth in the Loan Documents relating to such Intellectual Property;

(e) the Administrative Agent shall have received an appraisal (based upon FLV) of such Intellectual Property by a third party appraiser reasonably acceptable to the Administrative Agent and otherwise in form and substance reasonably satisfactory to the Administrative Agent; and

(f) the Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent that all actions have been taken that the Administrative Agent may reasonably deem necessary or appropriate in order to create valid first and subsisting Liens in favor of the Administrative Agent, and (ii) all filings reasonably requested by the Administrative Agent have been filed with the United States Copyright Office, United States Patent and Trademark Office, and each other jurisdiction (if any) as shall be deemed necessary or appropriate in the Administrative Agent's reasonable discretion, in each case, to perfect and further evidence the Administrative Agent's Lien on such Intellectual Property.

"Eligible Machinery and Equipment" means, as of any date of determination thereof, without duplication, Equipment of a Borrower, that in each case, except as otherwise agreed by the Administrative Agent, (A) complies in all material respects with each of the representations and warranties respecting Equipment made by the Loan Parties in the Loan Documents, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Administrative Agent, the following items of Equipment shall not be included in Eligible Machinery and Equipment:

(a) Equipment that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto free and clear of any Lien other than Liens granted to the Administrative Agent, Revolving Liens, and other Permitted Liens having priority by operation of applicable Law over the Lien of the Administrative Agent;

(b) Equipment that is not subject to a perfected first-priority security interest in favor of the Administrative Agent (other than Permitted Liens having priority by operation of applicable Law over the Lien of the Administrative Agent);

(c) Equipment with respect to which the full purchase price has not been paid;

(d) Equipment that is not located in the United States of America;

(e) Equipment that is not at a location that is owned by a Borrower, provided, however, that Equipment that is located on leased premises or in the possession of a warehouseman, bailee, processor, repairman, mechanic or similar other Person in the ordinary course of business shall not be excluded from Eligible Machinery and Equipment under this clause (e) so long as the lessor or such Person possessing such Inventory has delivered a Lien Waiver to the Administrative Agent or, if elected by the Administrative Agent, an appropriate Rent and Charges Reserve has been established;

(f) Equipment that is (i) not in all material respects in working order and condition (ordinary wear and tear excepted), (ii) not used or held for use by such Borrower in the ordinary course of business of such Borrower, or (iii) as determined by Administrative Agent in its Credit Judgment defective, damaged, or unfit for use in any material respect;

(g) such Equipment (i) is not subject to any agreement, other than this Agreement, any other Loan Document, the Revolving Credit Agreement or any other Revolving Loan Document, which restricts the ability of such Borrower to use, sell, transport or dispose of such Equipment or which restricts Administrative Agent's ability to take possession of, sell or otherwise dispose of such Equipment and (ii) has not been purchased from a Person subject to Sanctions;

(h) Equipment that the Administrative Agent determines may constitute "Fixtures" under the applicable laws of the jurisdiction in which such Equipment is located (unless agreed to by Administrative Agent in its sole discretion, including any circumstance as to which the Administrative Agent has received all collateral diligence, agreements, documents, instruments and filings that the Administrative Agent may require (including, without limitation Lien Waivers by applicable landlords and mortgagees with respect to the property on which such Equipment is located), all in form and substance satisfactory to the Administrative Agent, to provide for, and evidence of record, its first priority perfected Lien in such assets);

(i) Equipment acquired in a Permitted Acquisition unless and until the Administrative Agent has completed or received (A) an appraisal of such Equipment from appraisers reasonably satisfactory to the Administrative Agent and establishes Reserves (if applicable) therefor, and (B) such other due diligence as the Administrative Agent may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent;

(j) Equipment that contains or bears, or is subject to, any intellectual property rights of any third party (including rights licensed to such Borrower) unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such Equipment without (i) infringing the rights of such third party, (ii) violating any contract with such third party, or (iii) incurring any liability to such third party; and

(k) which Administrative Agent, in its Credit Judgment, has deemed to be ineligible.

"Environmental Laws" means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of a Loan Party or any of its Subsidiaries directly or indirectly resulting from

or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equipment” means “equipment” as defined in the UCC, including all equipment and machinery used in the ordinary course of business of the Loan Parties and included in any appraisal delivered to the Administrative Agent from time to time.

“Equity Interests” means, with respect to any Person, (a) all of the shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person, (b) all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person, (c) all of the securities convertible into or exchangeable for (i) shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person or (ii) warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person, and (d) all of the other ownership, control or profit interests in such Person, whether voting or nonvoting, and whether or not such shares, units, 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 any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(3) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

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

“Event of Default” has the meaning specified in Section 9.01.

“Exchange Act” means the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

“Excluded Deposit Account” means (a) Trust Accounts, (b) zero balance disbursement accounts and (c) other Deposit Accounts maintained in the Ordinary Course of Business containing cash amounts that do not exceed at any time \$100,000 in the aggregate for all such accounts under this clause (c).

“Excluded Equity Interests” means (a) any of the outstanding Voting Equity Interests of any CFC or CFCHC that is a Direct Foreign Subsidiary of a Loan Party in excess of 65% of all the Voting Equity Interests of such CFC or CFCHC, (b) any Voting Equity Interests of any CFC or CHCHC that is not a Direct Foreign Subsidiary of a Loan Party, and (c) the Equity Interests of a Subsidiary that is not a wholly-owned Subsidiary the pledge of which would violate a contractual obligation to the owners of the other Equity Interests

of such Subsidiary (other than any such owners that are the Company or Affiliates of the Company) that is binding on or relating to such Equity Interests, or the applicable organizational documents, joint venture agreement or shareholders' agreement of such Subsidiary.

“Excluded Real Property” means (a) any fee-owned Real Property of a Loan Party with a purchase price of less than \$1,000,000 individually, and (b) any Real Property with respect to which, in the Credit Judgment of the Administrative Agent, the cost (including as a result of adverse tax consequences) of providing a Mortgage shall be excessive in view of the benefits to be obtained by the Term Loan Lenders.

“Excluded Receipts” means cash received by any Loan Party or any of their Subsidiaries directly from any of the events listed on Schedule 1.03 hereto.

“Excluded Subsidiary” means (a) any Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code (a “CFC”), (b) any Subsidiary that owns no material assets other than the Capital Stock or indebtedness of one or more CFCs and/or one or more CFCHCs (a “CFCHC”) and (c) any direct or indirect Subsidiary of any CFC or CFCHC.

“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 Term Loan Lender, its 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 Term Loan 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 Term Loan Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower Agent under Section 11.13) or (ii) such Term Loan Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Term Loan Lender's assignor immediately before such Term Loan Lender became a party hereto or to such Term Loan Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any withholding Taxes imposed pursuant to FATCA.

“Existing Agreement” means that certain Credit Agreement dated as of September 3, 2020, among the Borrower, Holdings, Keybank National Association, as administrative agent, and a syndicate of lenders, as amended through the Closing Date.

“Extraordinary Expenses” means all costs, expenses, liabilities or advances that Administrative Agent may incur or make during a Default or Event of Default, or during the pendency of an proceeding of any Loan Party under any Debtor Relief Laws, including those relating to (a) any audit, inspection, 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 Term Loan Lender, any Loan Party, any representative of creditors of a Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Administrative Agent's Liens with respect to any Collateral), Loan Documents, or Obligations, including any Term Loan 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 proceeding applicable to any Loan Party under any Debtor Relief Laws; (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 modification, waiver, 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, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Loan Party or independent contractors in liquidating any Collateral, and travel expenses.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Facility Termination Date” means the date as of which Payment in Full has occurred.

“Fair Market Value” means, with respect to any asset or any group of assets, as of any date of determination, the value of the consideration obtainable in a sale of such assets at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time giving regard to the nature and characteristics of such asset.

“FCPA” means the U.S. Foreign Corrupt Practices Act.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

“Fee Letter” means the letter agreement, dated as of the Closing Date among the Company and the Administrative Agent.

“Field Exam” means any visit and inspection of the properties, assets and records of any Loan Party during the term of this Agreement, which shall include access to such properties, assets and records sufficient to permit the Administrative Agent or its representatives to examine, audit and make extracts from any Loan Party’s books and records, make examinations and audits of any Loan Party’s other financial matters and Collateral as Administrative Agent deems appropriate in its Credit Judgment, and discussions with its officers, employees, agents, advisors and independent accountants regarding such Loan Party’s business, financial condition, assets, prospects and results of operations.

“Field Exam Trigger Event” means Availability is less than the greater of (a) 20.0% of the Maximum Revolving Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (b) \$15,000,000.

“FIRREA” means The Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

“Fixed Charge Trigger Period” has the meaning specified in the Revolving Credit Agreement.

“Floor” means a rate of interest equal to 2.00%.

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

“FLV” means, with respect to Eligible Intellectual Property, the forced liquidation value thereof as determined in a manner acceptable to the Administrative Agent in its Credit Judgment by an appraiser acceptable to the Administrative Agent, net of all costs of liquidation thereof.

“Foreign Lender” means (a) if the applicable Borrower is a U.S. Person, a Term Loan Lender that is not a U.S. Person, and (b) if the applicable Borrower is not a U.S. Person, a Term Loan Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

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

“Guarantee” means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any debt obligation, payment or performance of any other Person (the “primary obligor”), or otherwise agreeing to provide funds for payment or performance of the debt or other obligations of the primary obligor in any manner, whether directly or indirectly, and including any obligation of any 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 of a primary obligor, (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) Lien on any assets of such Person securing any debt or other obligation of any primary obligor, 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 or other obligation 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” as a verb has a corresponding meaning.

“Guarantor” means each Person who executes or becomes a party to this Agreement as a guarantor pursuant to Article XII or otherwise executes and delivers a guaranty agreement reasonably acceptable to the Administrative Agent guaranteeing any of the Obligations.

“Guarantor Payment” has the meaning specified in Section 2.15(c).

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Holdings” has the meaning specified in the introductory paragraph hereof.

“Illegality Notice” has the meaning specified in Section 3.02.

“Increase Effective Date” has the meaning specified in Section 2.14(d).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments or upon which interest is customarily paid;

(b) all direct or contingent obligations of such Person arising under or in respect of letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and other financial products and services (including treasury management and commercial credit card, merchant card and purchase or procurement card services);

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable arising in the Ordinary Course of Business being paid on a timely basis and consistent with past practices) and any accrued and unpaid obligations with respect to earnout payments or similar payments under Acquisition documents;

(e) indebtedness secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) obligations under Capital Leases and Synthetic Lease Obligations of such Person;

(g) all obligations of such Person with respect to the redemption, repayment or other repurchase or payment in respect of any Disqualified Equity Interest; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, to the extent such Indebtedness is recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“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 Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Insolvency Event” means, with respect to any Person:

(a) the commencement of: (i) a voluntary case by such Person under the Bankruptcy Code or (ii) the seeking of relief by such Person under other Debtor Relief Laws;

(b) the commencement of an involuntary case or proceeding against such Person under the Bankruptcy Code or other Debtor Relief Laws and the petition or other filing is not controverted or dismissed within sixty (60) days after commencement of the case or proceeding;

(c) a custodian (as defined in the Bankruptcy Code or equal term under any other Debtor Relief Law, including a receiver, interim receiver, receiver manager, trustee or monitor) is appointed for, or takes charge of, all or substantially all of the property of such Person;

(d) such Person commences (including by way of applying for or consenting to the appointment of, or the taking charge by, a rehabilitator, receiver, interim receiver, custodian, trustee, monitor, conservator or liquidator (or any equal term under any other Debtor Relief Laws) (collectively, a “conservator”) of such Person or all or any substantial portion of its property) any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, liquidation, rehabilitation, conservatorship or similar law of any jurisdiction whether now or hereafter in effect relating to such Person;

(e) such Person is adjudicated by a court of competent jurisdiction to be insolvent or bankrupt;

(f) any order of relief or other order approving any such case or proceeding referred to in clauses (a) or (b) above is entered;

(g) such Person suffers any appointment of any conservator or the like for it or any substantial part of its property that continues undischarged or unstayed for a period of sixty (60) days; or

(h) such Person makes a compromise, arrangement or assignment for the benefit of creditors or generally does not pay its debts as such debts become due.

“Intellectual Property” means all past, present and future: trade secrets, know-how and other proprietary information; trademarks, uniform resource locations (URLs), internet domain names, service marks, sound marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights (including copyrights for computer programs) and copyright registrations or applications for registrations which have heretofore been or may hereafter be issued throughout the world and all tangible property embodying the copyrights, unpatented inventions (whether or not patentable); patent applications and patents; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

“Intercreditor Agreement” means that certain intercreditor agreement between the Administrative Agent, and the Revolving Agent, and acknowledged by the Loan Parties dated as of the date hereof and in form and substance reasonably acceptable to the Administrative Agent.

“Interest Payment Date” means, with respect to any Term Loan, the first Business Day of each calendar month.

“In-Transit Trigger Period” means the period commencing on the day, as reasonably determined by the Administrative Agent, that (a) Availability is less than the greater of (1) 20% of the Maximum Revolving Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve), as of such date, and (2) \$15,000,000, or (b) an Event of Default has occurred. The occurrence of an In-Transit Trigger Period shall be deemed continuing until (i) such date as such Event of Default shall no longer be continuing or (ii) such date as Availability has been equal to or greater than any amount described in the foregoing clause (a) for sixty (60) consecutive days, in which event (so long as no intervening Event of Default has occurred) an In-Transit Trigger Period shall no longer be deemed to be continuing.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) an Acquisition with respect to another Person or (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person. For purposes of compliance with Section 8.03, the amount of any Investment (i) shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less all returns of principal or equity thereon (and without adjustment by reason of the financial condition of such other Person), (ii) if made by the transfer or exchange of property other than cash, shall be deemed to be the original principal or capital amount equal to the Fair Market Value of such property at the time of such transfer or exchange and (iii) if made in the form of a Guaranty or acquisition or assumption of Indebtedness, shall be deemed the maximum principal amount of such Indebtedness or maximum value of the obligation Guaranteed when made, as applicable.

“Investment Affiliate” means (a) Blackwell Partners LLC – Series A, solely with respect to any securities managed by a Permitted Holder pursuant to an investment management agreement which grants control to a Permitted Holder and (b) any fund or investment vehicle that (i) is organized by a Permitted Holder for the purpose of making equity or debt investments in one or more companies and (ii) is controlled by, or under common control with, such Permitted Holder. For purposes of this definition ‘control’ means the power to direct or cause the direction of management and policies of a Person whether by contract or otherwise.

“IP Rights” rights of any Person to use any Intellectual Property.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender Joinder Agreement” means a joinder agreement in form and substance satisfactory to the Administrative Agent and executed by an Additional Term Loan Commitment Lender in connection with Section 2.14.

“Lending Office” means, as to any Term Loan Lender, the office or offices of such Term Loan Lender described as such in such Term Loan Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower Agent and the Administrative Agent.

“License” means any license or agreement under which a Loan Party is granted IP Rights in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of assets or property or any other conduct of its business.

“Licensor” means any Person from whom a Loan Party obtains IP Rights.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest, or any preference, priority or other security agreement or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Lien Waiver” means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, by which (a) for any Collateral located on leased premises or owned premises subject to a mortgage, the lessor or mortgagee, as applicable, agrees to, among other things, waive or subordinate any Lien it may have on the Collateral and permit the Administrative Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for the Administrative Agent, and agrees to deliver the Collateral to the Administrative Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Administrative Agent’s Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Administrative Agent upon request; and (d) for any Collateral subject to a Licensor’s IP Rights, the Licensor grants to the Administrative Agent the right, vis-à-vis such Licensor, to enforce the Administrative Agent’s Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

“Liquidity” means, at any time, an amount equal to (a) Qualified Cash, *plus* (b) Availability under the Revolving Credit Agreement.

“Loan Account” has the meaning assigned to such term in Section 2.11.

“Loan Documents” means this Agreement, each Note, each Security Instrument, each Borrowing Base Certificate, each Compliance Certificate, the Intercreditor Agreement, the Fee Letter, any agreement creating or perfecting rights in Cash Collateral securing any Obligation hereunder and all other instruments and documents heretofore or hereafter executed or delivered to or in favor of any Term Loan Lender or the Administrative Agent in connection with the Loans made and transactions contemplated by this Agreement.

“Loan Parties” means the Borrowers and each Guarantor.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or condition (financial or otherwise) of either (i) the Borrowers, taken as a whole or (ii) Holdings and its Subsidiaries, taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party or on the ability of the Administrative Agent to collect any Obligation or realize upon any material portion of the Collateral.

“Material Contract” means any agreement or arrangement to which a Loan Party or Subsidiary is party (other than the Loan Documents) (a) that is deemed to be a material contract under any securities laws applicable to such Loan Party, including the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that relates to Subordinated Debt or the Revolving Obligations, or to other Indebtedness in an aggregate principal amount of \$500,000 or more.

“Material License” has the meaning assigned to such term in Section 7.15.

“Material Third-Party Agreement” has the meaning assigned to such term in Section 7.17(a).

“Maturity Date” means the earlier of (a) August 7, 2026 and (b) the “Revolving Credit Termination Date” (as defined in the Revolving Credit Agreement) and any similar term used in the Revolving Credit Agreement; provided, that, if the date specified in clause (a) or clause (b), as applicable, is not a Business Day, the “Maturity Date” shall be the immediately succeeding Business Day.

“Maximum Revolving Borrowing Amount” has the meaning specified for the term “Maximum Borrowing Amount” in the Revolving Credit Agreement.

“Measurement Period” means, at any date of determination, the most recently completed trailing twelve month period of Holdings and its Subsidiaries for which financial statements have or should have been delivered in accordance with Section 7.01(a), 7.01(b) or 7.01(c); provided that for the period ending (i) August 31, 2023, the Measurement Period means, at such date of determination, the one month period ending on such date, (ii) September 30, 2023, the Measurement Period means, at such date of determination, the two month period ending on such date, (iii) October 31, 2023, the Measurement Period means, at such date of determination, the three month period ending on such date, (iv) November 30, 2023, the Measurement Period means, at such date of determination, the four month period ending on such date, (v) December 31, 2023, the Measurement Period means, at such date of determination, the five month period ending on such date, (vi) January 31, 2024, the Measurement Period means, at such date of determination, the six month period ending on such date, (vii) February 29, 2024, the Measurement Period means, at such date of determination, the seven month period ending on such date, (viii) March 31, 2024, the Measurement Period means at such date of determination, the eight month period ending on such date, (ix) April 30, 2024, the Measurement Period means, at such date of determination, the nine month period ending on such date, (x) May 31, 2024, the Measurement Period means, at such date of determination, the ten month period ending on such date, and (xi) June 30, 2024, the Measurement Period means, at such date of determination, the eleven month period ending on such date, in each case of Holdings and its Subsidiaries.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage Related Documents” means, with respect to any Real Property subject to a Mortgage, the following, in form and substance satisfactory to the Administrative Agent and received by the Administrative Agent for review at least 15 days prior to the effective date of the Mortgage: (a) an ALTA mortgagee title policy (or binder therefor) covering the Administrative Agent’s interest under the Mortgage, in a form and amount and by an insurer acceptable to the Administrative Agent, which must be fully paid on such effective date; (b) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as the Administrative Agent may require with respect to other Persons having an interest in the Real Property; (c) an ALTA Survey by a licensed surveyor acceptable to the Administrative Agent; (d) a life-of-loan flood hazard determination and, if the Real Property is located in a flood plain, an acknowledged notice to borrower and flood insurance in an amount, on terms, including endorsements, and by an insurer, in each case, acceptable to the Administrative Agent; (e) a current appraisal of the Real Property, prepared by an appraiser acceptable to the Administrative Agent, and in form and substance satisfactory to Required Lenders; (f) an environmental assessment, prepared by environmental engineers acceptable to the Administrative Agent, and accompanied by such reports, certificates, studies or data as the

Administrative Agent may reasonably require, which shall all be in form and substance satisfactory to Required Lenders; and (g) an environmental indemnity agreement and such other documents, instruments or agreements as the Administrative Agent may reasonably require with respect to any environmental risks regarding the Real Property.

“Mortgaged Property” means (a) the Real Property of the Loan Parties listed on Schedule 1.01 hereto and (b) Real Property, other than Excluded Real Property, required from time to time to be subject to a Mortgage pursuant to the terms of the Loan Documents.

“Mortgages” means the mortgages, leasehold mortgages, deeds of trust, leasehold deeds of trust or deeds to secure debt executed by a Loan Party on or about the Closing Date, or from time to time thereafter as may be required under the Loan Documents, in favor of the Administrative Agent, for the benefit of the Secured Parties, by which such Loan Party has granted to the Administrative Agent, as security for the Obligations, a Lien upon the Mortgaged Property described therein, together with all mortgages, deeds of trust and comparable documents now or at any time hereafter securing the whole or any part of the Obligations.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(4) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including any Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means

(a) with respect to the Disposition of any asset of any Loan Party or any Subsidiary, the excess, if any, of (i) the sum of the cash and cash equivalents received in connection with such Disposition (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by such asset and that is required to be repaid in connection with the Disposition thereof (other than Indebtedness under the Loan Documents and Indebtedness owing to such Loan Party or any Subsidiary), (B) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary in connection with such Disposition, including any brokerage commissions, underwriting fees and discount, legal fees, finder’s fees and other similar fees and commissions, (C) taxes paid or reasonably estimated to be payable by the Loan Party or any Subsidiary in connection with the relevant Disposition, (D) the amount of any reasonable reserve required to be established in accordance with GAAP against liabilities (other than taxes deducted pursuant to clause (C) above) to the extent such reserves are (x) associated with the assets that are the object of such Disposition and (y) retained by such Loan Party or applicable Subsidiary, and (E) the amount of any reasonable reserve for purchase price adjustments and retained fixed liabilities reasonably expected to be payable by such Loan Party or applicable Subsidiary in connection therewith to the extent such reserves are (1) associated with the assets that are the object of such Disposition and (2) retained by such Loan Party or applicable Subsidiary; provided that the amount of any subsequent reduction of any reserve provided for in clause (D) or (E) above (other than in connection with a payment in respect of such liability) shall (X) be deemed to be Net Cash Proceeds of such Disposition occurring on the date of such reduction, and (Y) immediately be applied to the prepayment of Loans in accordance with Section 2.06(c); and

(b) with respect to any issuance of Indebtedness or Equity Interests by any Loan Party or any Subsidiary, the excess, if any, of (i) the sum of the cash and cash equivalents received in connection with such issuance over (ii) the sum of (A) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary in connection with such issuance, including any brokerage commissions, underwriting fees and discount, legal fees, and other similar fees and commissions and (B) taxes paid or payable to the applicable taxing authorities by the Loan Party or any Subsidiary in connection with and at the time of such issuance.

“NOLV” means with respect to the Borrowers’ Inventory, the orderly liquidation value of such Inventory (a percentage of the Cost of such Inventory) and with respect to the Borrower’s Equipment, the orderly liquidation value of such Equipment, in each case, that might be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from time to time by reference to the most recent appraisal received by the Administrative Agent conducted by an independent appraiser engaged by the Administrative Agent.

“Non-Consenting Lender” has the meaning assigned to such term in Section 11.01(d).

“Note” means a promissory note made by the Borrowers in favor of a Term Loan Lender evidencing Term Loans made by such Term Loan Lender, substantially in the form of Exhibit A.

“NPL” means the National Priorities List pursuant to CERCLA, as updated from time to time.

“Obligations” means all amounts owing by any Loan Party to the Administrative Agent, any Term Loan Lender or any other Secured Party pursuant to or in connection with this Agreement or any other Loan Document or otherwise with respect to any Term Loan, and including all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any proceeding under any Debtor Relief Law relating to any Loan Party, or would accrue but for such filing or commencement, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement obligations, indemnification and reimbursement payments, fees, costs and expenses (including all fees, costs and expenses of counsel to the Administrative Agent) incurred in connection with this Agreement or any other Loan Document, whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, together with all renewals, extensions, modifications or refinancings thereof.

“OFAC” means the United States Department of Treasury Office of Foreign Assets Control.

“OFAC SDN List” means the list of the Specially Designated Nationals and Blocked Persons maintained by OFAC.

“Ordinary Course of Business” means the ordinary course of business of the Company and its Subsidiaries, consistent with past practices and undertaken in good faith.

“Organization 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 operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any 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 and, if applicable, any certificate or articles of formation or organization of such entity; and (d) with respect to any of the foregoing, each shareholder agreement, member agreement, agreement among partners or limited partners, stock designation, equity holder agreement or other agreement among or affecting rights of holders of Equity Interests issued by any Loan Party and which such Loan Party is a party to.

“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 11.13).

“Outstanding Amount” means with respect to Term Loans and Protective Advances on any date, the aggregate outstanding principal amount thereof after giving effect to any prepayments or repayments of Term Loans or Protective Advances occurring on such date.

“Overnight Rate” means, for any day and from time to time as in effect, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent, in accordance with banking industry rules on interbank compensation.

“Participant” has the meaning assigned to such term in Section 11.06(d).

“Participant Register” has the meaning assigned to such term in Section 11.06(d).

“Patent Security Agreement” means any patent security agreement pursuant to which a Loan Party assigns to Administrative Agent, for the benefit of the Secured Parties, such Person’s interests in its patents, as security for the Obligations.

“PATRIOT Act” means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“Payment Conditions” means, with respect to any Specified Transaction, the satisfaction of the following conditions:

(a) as of the date of any such Specified Transaction and immediately after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(b) Availability (after giving Pro Forma Effect to such Specified Transaction) during the ninety (90) consecutive day period ending on and including the date of such Specified Transaction and during the ninety (90) consecutive day period immediately after the date of such Specified Transaction shall be not less than the greater of (A) 25.0% of the Maximum Revolving Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) and (B) \$15,000,000, as of such date;

(c) the Fixed Charge Coverage Ratio as of the end of the most recently ended Measurement Period prior to the making of such Specified Transaction, calculated on a Pro Forma Basis, shall be equal to or greater than 1.00 to 1.00;

(d) the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower Agent certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby; and

(e) such Specified Transaction shall occur after August 7, 2024.

“Payment in Full” means (a) the payment in full in cash of all Obligations (other than contingent Obligations for which no claim has been asserted), together with all accrued and unpaid interest and fees thereon shall have been made, and (b) all claims of the Loan Parties against any Secured Party arising on or before the satisfaction of the condition set forth in clause (a) above, shall have been released on terms acceptable to the Administrative Agent; provided that notwithstanding full payment or Cash Collateralization of the Obligations as provided herein, the Administrative Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages the Administrative Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Administrative Agent receives (i) a written agreement, executed by Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying Agent and Lenders from any such damages; or (ii) such Cash Collateral as the Administrative Agent, in its discretion, deems necessary to protect against any such damages.

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

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by any Loan Party and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” means any Acquisition by a Loan Party with respect to which:

(a) the Person to be (or whose assets are to be) acquired does not oppose such Acquisition and the line or lines of business of the Person to be acquired constitute Core Businesses and had positive EBITDA for the 12 month period most recently ended;

(b) after giving effect to such Acquisition on a Pro Forma Basis and the costs related thereto (including cash and other property (other than Equity Interests or options to acquire Equity Interests of any Loan Party) given as consideration, any Indebtedness incurred, assumed or acquired by any Loan Party or any Subsidiary in connection with such Acquisition, all additional purchase price amounts in the form of earnouts and other contingent obligation calculated at the maximum amount thereof, and all fees expenses and transaction costs incurred in connection therewith), the Payment Conditions shall have been met with respect thereto;

(c) the Borrower Agent shall have furnished to the Administrative Agent at least five (5) Business Days prior to the date on which any such Acquisition is to be consummated or such shorter time as Administrative Agent may allow, a certificate of a Responsible Officer of the Borrower Agent, in form and substance reasonably satisfactory to the Administrative Agent, (i) certifying that all of the requirements set forth above will be satisfied on or prior to the consummation of such Acquisition and (ii) a reasonably detailed calculation of item (b) above (and such certificate shall be updated as necessary to make it accurate as of the date the Acquisition is consummated); and

(d) The Borrower Agent shall have furnished the Administrative Agent with ten (10) days’ prior written notice of such intended Acquisition and shall have furnished the Administrative Agent with a current draft of the applicable acquisition documents (and final copies thereof as and when executed), and to the extent available, appropriate financial statements of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and, to the extent available, such other information as the Administrative Agent may reasonably request.

“Permitted Holder” means Coliseum Capital Management, LLC and its Investment Affiliates.

“Permitted Liens” has the meaning specified in Section 8.02.

“Permitted Tax Distributions” means for any taxable period in which a Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of such Borrower is the common parent (a “Tax Group”), distributions by such Borrower to such direct or indirect parent of such Borrower to pay federal, foreign, state and local income Taxes of such Tax Group that are attributable to the taxable income of the Borrower and/or its Subsidiaries; *provided* that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that such Borrower and the Subsidiaries would have been required to pay as a stand-alone Tax Group, reduced by any portion of such income Taxes directly paid by such Borrower or any of its Subsidiaries.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan, but excluding a Multiemployer Plan), maintained for employees of any Loan Party or any ERISA Affiliate or any such Plan to which any Loan Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Post-Closing Agreement” means that certain Post-Closing Agreement by and between the Borrower Agent and the Administrative Agent dated as of the Closing Date with respect to the satisfaction after the Closing Date of certain collateral matters.

“Prime Rate” means, for any day, a fluctuating rate per annum equal to the greatest of (a) 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 greatest 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 reasonably determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as reasonably determined by the Administrative Agent), (b) the sum of the Federal Funds Rate on such day plus 0.50%, and (c) Adjusted Term SOFR plus 1.00%. Any change in the Prime Rate due to a change in any of the rates referred to in the foregoing clauses (a) through (c) shall be effective from and including the effective date of such change. If the Prime Rate is being used as an alternative rate of interest pursuant to Sections 3.02 or 3.03, then the Prime Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above, provided that if Prime Rate as determined above shall ever be less than the 3.00% then Prime Rate shall be deemed to be the 3.00%. The Prime Rate is a reference rate and not necessarily the lowest interest rate at which any Secured Party may make loans or other extensions of credit to other customers.

“Pro Forma Adjustment” means, for the purposes of calculating Consolidated EBITDA for any Measurement Period, if at any time during such Measurement Period, Holdings or any of its Subsidiaries shall have made a Permitted Acquisition or Disposition, Consolidated EBITDA for such Measurement Period shall be calculated after giving pro forma effect thereto as if any such Permitted Acquisition or Disposition occurred on the first day of such Measurement Period, including (a) with respect to an any Permitted Acquisition, inclusion of the actual historical results of operation of such acquired Person or line of business during such Measurement Period and (b) with respect to any Disposition, exclusion of the actual historical results of operations of the disposed of Person or line of business or assets during such Measurement Period.

“Pro Forma Basis,” “Pro Forma Compliance” and “Pro Forma Effect” means, with respect to compliance with any applicable test, financial ratio or covenant hereunder, that (without duplication):

(a) the Pro Forma Adjustment shall have been made, to the extent applicable;

(b) all Specified Pro Forma Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made (the period beginning on the first day of such period of measurement and continuing until the date of the consummation of such event, the “Reference Period”) shall be deemed to have occurred as of the first day of the applicable Reference Period; provided that (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Pro Forma Transaction, (A) shall be excluded in the case of a Disposition of all or substantially all Equity Interests in or assets of any Loan Party or its Subsidiaries or any division, product line, or facility used for operations of the Loan Parties or their Subsidiaries, and (B) shall be included in the case of a Permitted Acquisition or Investment described in the definition of Specified Pro Forma Transaction, and (ii) all Indebtedness issued, incurred or assumed as a result of, or to finance, any Specified Pro Forma Transaction or permanently repaid in connection with any Specified Pro Forma Transaction during the Reference Period shall be deemed to have been issued, incurred, assumed or permanently repaid at the beginning of such Reference Period (with interest expense of such Person attributable to any Indebtedness for which pro forma effect is being given as provided in preceding clause (ii) that has a floating or formula rate, shall have an implied rate of interest for the applicable Reference Period determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination); provided, that, the foregoing pro forma adjustments may be applied to any such test, financial ratio or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and the definition of Pro Forma Adjustment;

(c) with respect to any calculation of Availability on a pro forma basis (i) for any Specified Transaction and the related specified period or specified date or time hereunder, the determination of Availability shall be made giving pro forma effect to all “Credit Extensions” (as defined in the Revolving Loan Agreement) to be made in connection with the consummation of such Specified Transactions as if made thereunder on the first day of the period being tested and remaining outstanding through and including the date of consummation of such Specified Transactions and (ii) for any Permitted Acquisition, the calculation of consideration paid in connection with such Acquisition shall include all earn-out obligations, if any, in connection therewith, calculated at the maximum potential amount thereof; and

(d) for the purposes of calculating the Consolidated Fixed Charge Coverage Ratio for any Measurement Period on a Pro Forma Basis for determining compliance with the Payment Conditions with respect to any Specified Debt Payment under Section 8.11(a)(v), the amount of any proposed Specified Debt Payment, together with all other such payments made during such Measurement Period based on compliance with the Payment Conditions, shall be included in the definition of “Consolidated Fixed Charges” for such determination.

Whenever any provision of this Agreement requires the Loan Parties to be in compliance on a Pro Forma Basis (or in Pro Forma Compliance) with a specified level of Availability or specified Consolidated Fixed Charge Coverage Ratio in connection with any action to be taken by any Loan Party or any Subsidiary, the Borrower Agent shall deliver to the Administrative Agent a certificate of a Senior Officer setting forth in reasonable detail the calculations demonstrating such compliance.

“Properly Contested” means with respect to any obligation of a Loan Party, (a) the obligation is subject to a bona fide dispute regarding amount or such Loan Party’s liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to have a Material Adverse Effect, nor result in forfeiture or sale of any assets of a Loan Party; (e) no Lien is imposed on assets of a Loan Party, unless bonded and stayed to the reasonable satisfaction of the Administrative Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

“Protective Advance” has the meaning specified in Section 2.01(c)(i).

“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.

“Qualified Cash” means, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of the Loan Parties that is in Deposit Accounts or in Securities Accounts, or any combination thereof, in each case, located within the United States.

“Ratable Share” has the meaning specified in Section 2.01(c)(ii)(C).

“Real Property” means all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Person, including all easements, rights-of-way, and similar rights appurtenant thereto and all leases, tenancies, and occupancies thereof.

“Recipient” means the Administrative Agent, any Term Loan Lender or any other recipient of any payment to be made by or on account of any Obligation of a Borrower hereunder.

“Refinancing Conditions” means the following conditions for Refinancing Indebtedness: (a) it is in an aggregate principal amount that does not exceed the principal amount of the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended (the “Original Indebtedness”) plus accrued interest and reasonable fees and expenses incurred in connection with such Refinancing Indebtedness; (b) the interest rate applicable to such Refinancing Indebtedness does not exceed the greater of the (i) interest rate applicable to the Original Indebtedness and (ii) the otherwise market rate of interest for such similar Indebtedness to similar borrowers; (c) it has a final maturity no sooner than, and a weighted average life no less than, the applicable Original Indebtedness; (d) it contains no mandatory prepayment provisions more favorable to the lenders thereunder than the mandatory prepayment provision under the Original Indebtedness, (e) to the extent the Original Indebtedness is unsecured, such Refinancing Indebtedness shall be unsecured; (f) to the extent the Original Indebtedness is secured by Liens, such Refinancing Indebtedness is either unsecured or is not secured by any Liens that did not secure the Original Indebtedness immediately prior to incurrence of the Refinancing Indebtedness; (g) to the extent that such Original Indebtedness is subject to any Subordinations Provisions, such Refinancing Indebtedness is subject to Subordination Provisions no less favorable to the Administrative Agent and the Term Loan Lenders than those applicable to the Original Indebtedness immediately prior to incurrence of the Refinancing Indebtedness; (h) no additional Person not obligated, primarily or contingently, on the Original Indebtedness is obligated, primarily or contingently, on such Refinancing Indebtedness; (i) such Refinancing Indebtedness shall be on terms not materially less favorable to the Administrative Agent or the Term Loan Lenders, and not materially more restrictive to the Loan Parties, than the terms of the Original Indebtedness; and (j) upon giving effect to such Refinancing Indebtedness, no Default or Event of Default exists.

“Refinancing Indebtedness” means the Indebtedness that is the result of any modification, refinancing, refunding, replacement, renewal or extension of Indebtedness permitted under Section 8.01(b), (f), (g), (h), (p), (q) and (r) as to which the Refinancing Conditions are satisfied; provided that the incurrence of any such Refinancing Indebtedness will be deemed to utilize permitted amounts of Indebtedness, if any, under each clause thereof.

“Register” has the meaning specified in Section 11.06(c).

“Registered Public Accounting Firm” has the meaning specified in the Securities Laws and shall be independent of the Company as prescribed in the Securities Laws.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, 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 and/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 and/or the Federal Reserve Bank of New York, or any successor thereto.

“Rent and Charges Reserve” means the aggregate of (a) all past due rent and other amounts owing by a Borrower to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Eligible Borrowing Base Assets or could assert a Lien on any Eligible Borrowing Base Assets; and (b) a reserve at least equal to three months’ rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

“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.

“Reporting Trigger Period” means the period (a) commencing on the day that (i) an Event of Default occurs and is continuing or (ii) Availability is less than the greater of (x) 20.0% of the Maximum Revolving Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$15,000,000 and (b) continuing until the date that during the previous sixty (60) consecutive days, (i) no Event of Default has existed and (ii) Availability has been greater than the greater of (x) 20.0% of the Maximum Revolving Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$15,000,000 at all times during such period.

“Required Lenders” means, as of any date of determination, Term Loan Lenders holding (and at any time there are two or more non-Affiliate Term Loan Lenders, at least two non-Affiliate Term Loan Lenders holding) more than 50% of the Term Loan Exposure of all Term Loan Lenders.

“Rescindable Amount” has the meaning specified in Section 2.12(b)(ii).

“Reserve” means any reserve constituting all or any portion of the Availability Reserve.

“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 each Loan Party, the chief executive officer, president, chief financial officer, treasurer, controller or assistant treasurer of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Holdings or any Subsidiary, (ii) any payment (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 such Equity Interest, or on account of any return of capital to Holdings or any Subsidiary’s stockholders, partners or members (or the equivalent Person thereof) or (iii) any distribution, advance or repayment of Indebtedness to or for the account of a holder of Equity Interests of Holdings or its Affiliates.

“Revolving Agent” means the “Administrative Agent” as defined in the Revolving Credit Agreement.

“Revolving Borrowing Base” means the “Borrowing Base” as defined in the Revolving Credit Agreement.

“Revolving Credit Agreement” means that certain Credit Agreement dated as of the Closing Date by, among others, Holdings, the Borrower, Bank of Montreal, as administrative agent, and the lenders from time to time parties thereto, as such agreement may be amended, supplemented, waived or otherwise modified from time to time to the extent permitted hereunder and any Refinancing Indebtedness in respect thereof in each case to the extent permitted hereunder.

“Revolving Facility” means the collective reference to the Revolving Credit Agreement, the Revolving Loan Documents, any notes and letters of credit issued pursuant thereto and any guarantee, security agreement, patent, trademark or copyright security agreements, mortgages, letter of credit applications and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time to the extent permitted hereunder and any Refinancing Indebtedness in respect thereof, in each case to the extent permitted hereunder.

“Revolving Lender” means any “Revolving Credit Lender” as defined in the Revolving Credit Agreement.

“Revolving Liens” means Liens permitted under Section 8.02(o) in favor of the Revolving Agent pursuant to the Revolving Loan Documents to secure the Revolving Obligations.

“Revolving Loans” means the “Revolving Credit Loans” as defined in the Revolving Credit Agreement.

“Revolving Loan Documents” means, collectively, (i) the Revolving Credit Agreement and (ii) the security documents, intercreditor agreements (including the Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the Revolving Facility or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time including in connection with Refinancing Indebtedness of the Revolving Facility.

“Revolving Obligations” means “Obligations” as defined in the Revolving Credit Agreement.

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

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. and any successor thereto.

“Same Day Funds” means immediately available funds.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including the OFAC SDN List), the United States Department of State, the United Nations Security Council, the European Union, any European Union member state, Canada, Her Majesty’s Treasury of the United Kingdom, or any other relevant sanctions authority, (b) any Person located, organized or resident in a Designated Jurisdiction or (c) any Person 50% or more owned by any Person described in clauses (a) or (b) above.

“Sanctions” means all economic or financial sanctions, sectoral sanctions, secondary sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States or Canadian government (including those administered by OFAC or the United States Department of State), or (b) the United Nations Security Council, the European Union, any European Union member state, His Majesty’s Treasury of the United Kingdom, or any other relevant sanctions authority with jurisdiction over any Loan Party or any of their respective Subsidiaries or Affiliates.

“Sarbanes-Oxley” means the Sarbanes-Oxley Act of 2002.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Party” means (a) each Term Loan Lender (b) the Administrative Agent, and (c) the successors and assigns of each of the foregoing.

“Secured Party Expenses” has the meaning set forth in Section 11.04(a).

“Securities Laws” means the Securities Act of 1933, the Exchange Act, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

“Security Agreement” means the Security Agreement dated as of the date hereof by the Loan Parties and the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit C.

“Security Instruments” means, collectively or individually as the context may indicate, the Security Agreement, the Control Agreements, the Credit Card Notifications, the Mortgages, the Mortgage Related Documents, the Patent Security Agreement, the Trademark Security Agreement, each Lien Waiver and all other agreements (including securities account control agreements), instruments and other documents, whether now existing or hereafter in effect, pursuant to which any Loan Party or other Person shall grant or convey to the Administrative Agent or the Term Loan Lenders a Lien in property as security for all or any portion of the Obligations.

“Shrink” means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

“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).

“Solvent” means, as to any Person, such Person (a) owns property or assets whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns property or assets whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured 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. “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. For purposes hereof, the amount of all contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

“Specified Debt Payment” means any prepayment of Indebtedness proposed to be made pursuant to Section 8.11(a)(v).

“Specified Investment” means any Investment proposed to be made pursuant to Section 8.03(g) or (i).

“Specified Pro Forma Transaction” means, with respect to any period, any Investment, Disposition, or other event, including any Specified Transactions, that by the terms of the Loan Documents requires “Pro Forma Compliance” with a test or covenant hereunder or requires such test or covenant to be calculated on a “Pro Forma Basis.”

“Specified Restricted Payment” means any Restricted Payment proposed to be made pursuant to Section 8.06(g).

“Specified Transaction” means each Specified Debt Payment, Specified Investment and Specified Restricted Payment.

“Subordinated Debt” means Indebtedness (including earnout payments) which is expressly subordinated in right of payment to the prior Payment in Full and which is in form and on terms reasonably satisfactory to, and approved in writing by, the Administrative Agent.

“Subordination Provisions” means any provision relating to debt or lien subordination applicable to or contained in any documents evidencing any Indebtedness, including Subordinated Debt or the Term Loans, including as set forth in the Intercreditor Agreement or other applicable intercreditor agreements acceptable to the Administrative Agent.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (but not a representative office of such Person) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Holdings.

“Subsidiary Guarantor” means any Subsidiary of the Company that is a Guarantor.

“Swap Contract” 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, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, together with any related schedules.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts 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), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Tax Receivable Agreement” means that certain Tax Receivable Agreement dated February 2, 2018, by and between Holdings and InnoHold, LLC, as amended, modified or supplemented from time to time prior to the date hereof and as further amended, modified or supplemented from time to time not in violation of this Agreement.

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

“Term Loan” means an extension of credit under Article II in the form of a Term Loan or a Protective Advance.

“Term Loan Commitment” means, as to each Term Loan Lender, its obligation to make Term Loans to the Borrowers pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Loan Lender’s name on Schedule 2.01. The aggregate Term Loan Commitments as of the Closing Date are \$25,000,000.

“Term Loan Exposure” means, as to any Term Loan Lender at any time, the aggregate principal amount at such time of its outstanding Term Loans and such Term Loan Lender’s participation in Protective Advances at such time.

“Term Loan Facility” means the facility described in Sections 2.01(a) and 2.14 providing for Term Loans to or for the benefit of the Borrowers by the Term Loan Lenders, in the case of Section 2.01(a), on the Closing Date and, in the case of Section 2.14, on the applicable Increase Effective Date, in the maximum aggregate principal amount of \$30,000,000.

“Term Loan Lender” has the meaning specified in the introductory paragraph hereto.

“Term Priority Collateral” has the meaning set forth in the Intercreditor Agreement.

“Term Loan Push Down Reserve” means a Reserve maintained against the Revolving Borrowing Base in an amount equal to the greater of (x) \$0 and (y) the excess, if any, of the aggregate principal amount of the Term Loans then outstanding over the Borrowing Base set forth in the most recently delivered Borrowing Base Certificate (or, if applicable, the amount set forth in the most recently delivered Term Loan Push Down Correction Notice (as defined in the Intercreditor Agreement) delivered pursuant to the Intercreditor Agreement).

“Term SOFR” means, for any day in any calendar month, the Term SOFR Reference Rate for a tenor of three (3) months on such day (such day, the “Determination Day”), in each case, that is two (2) U.S. Government Securities Business Days prior to the first day of such calendar month, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 4:00 p.m., Boston, Massachusetts time, on any Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities 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 U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Determination Day. Notwithstanding the foregoing, if the Administrative Agent has made the reasonable determination that adequate and reasonable means do not exist for determining the Term SOFR (or any component of the foregoing definition) or Term SOFR is, or will be, non-representative, and the Administrative Agent has made the same determination in relation to other similarly situated borrowers, the Administrative Agent may establish a reasonably equivalent alternative interest rate for the Loans (using a methodology substantially consistent with the methodology the Administrative Agent has used (or is using) with respect to similarly situated borrowers) and giving due consideration to the then prevailing market convention for determining a rate of interest for similar loans in the U.S. at such time and the feasibility of administering such alternative rate, in which case, such alternative rates of interest shall apply with respect to the Loans (which rate of interest shall be deemed to be the “Term SOFR Successor Rate” for all purposes of this Agreement).

“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 reasonable discretion).

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

“Term SOFR Successor Rate” shall have the meaning set forth in the last sentence of the definition of Term SOFR.

“Threshold Amount” means Two Million Dollars (\$2,000,000).

“Trademark Security Agreement” means any trademark security agreement pursuant to which any Loan Party assigns to the Administrative Agent, for the benefit of the Secured Parties, such Person’s interest in its trademarks as security for the Obligations.

“Transaction” means, individually or collectively as the context may indicate, (a) entering into the Revolving Loan Documents and the funding of the Revolving Credit Facility and (b) the entering by the Loan Parties into the Loan Documents to which they are a party and the funding of the Term Loan Facility.

“Trust Accounts” means Deposit Accounts or Securities Accounts containing cash, cash equivalents or Securities (a) held exclusively for employee benefit payments and expenses related to a Loan Party’s employees, or (b) required to be collected, remitted or withheld exclusively to pay payroll or taxes (including, without limitation, federal and state withholding taxes (including the employer’s share thereof)).

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if, with respect to any financing statement or by reason of any mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Administrative Agent pursuant to any applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than the State of New York, the term “UCC” shall also include the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of this Agreement, each Loan Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

“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, which 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.

“United States” and “U.S.” mean 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. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“Value” means, for an Eligible Account, the face amount of such Eligible Account, net of (a) any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could reasonably be expected to be claimed by the Account Debtor or any other Person and (b) the amount of any premiums, deductibles, co-insurance, fees or similar costs of and amounts payable by any Borrower relating to any acceptable credit insurance obtained with respect to such Account.

“Voting Equity Interests” means Equity Interests with respect to which the holders thereof are ordinarily, in the absence of contingencies, entitled to vote for the election of members of the Board of Directors of the issuer thereof, even if the right so to vote has been suspended by the happening of such a contingency.

“Wage Claim Reserves” means the reserves established by the Administrative Agent from time to time, in its reasonable discretion, to reflect the aggregate amount of liabilities of the Loan Parties that are or, upon nonpayment of or creation of a claim with respect to such liability, would, pursuant to Law, be secured by Liens on the Collateral that are senior to the Administrative Agent’s Liens arising from any state or Federal statutory provision for wage claims, unpaid taxes or other obligations or liabilities of the Loan Parties.

“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.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) 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 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, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) 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 and (vii) all covenants in Article VIII 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 be otherwise within the limitations of, another covenant (other than specific cross references permitting actions or conditions under other covenants) shall not avoid the occurrence of an Event of Default or Default if such action is taken or condition exists.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) A reference to Loan Parties’ “knowledge” or similar concept means actual knowledge of a Responsible Officer, or knowledge that a 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.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect on the Closing Date, except (i) with respect to any reports or financial information required to be delivered pursuant to Section 7.01, which shall be prepared in accordance with GAAP as in effect and applicable to that accounting period in respect of which reference to GAAP is being made and (ii) as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of each Loan Party 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.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower Agent or the Required Lenders shall so request, the Administrative Agent, the Term Loan Lenders and the Borrower Agent shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower Agent shall

provide to the Administrative Agent and the Term Loan Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything to the contrary contained in this Section 1.03 or the definition of “Capital Lease Obligations”, in the event of a change in GAAP requiring all leases to be capitalized, only those leases that would have constituted Capital Leases on the Closing Date (assuming for purposes hereof that such leases were in existence on the Closing Date) shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such change in GAAP shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such change).

(c) Consolidation of Variable Interest Entities. Except as expressly provided otherwise herein, all references herein to Consolidated financial statements of the Company and its Subsidiaries or to the determination of any amount for the Company and its Subsidiaries on a Consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Company is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

(d) Calculations. In computing financial ratios and other financial calculations of the Company and its Subsidiaries required to be submitted pursuant to this Agreement, all Indebtedness of the Company and its Subsidiaries shall be calculated at par value irrespective if the Company has elected the fair value option pursuant to FASB Interpretation No. 159 – The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115 (February 2007).

1.04 Uniform Commercial Code. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: “Chattel Paper,” “Commodity Account,” “Commodity Contracts,” “Deposit Account,” “Documents,” “General Intangibles,” “Instrument,” “Inventory,” “Record,” and “Securities Account.”

1.05 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Central time (daylight or standard, as applicable).

1.07 Automatic Increases to Fixed Dollar Availability Floors. Notwithstanding anything to the contrary in this Agreement or otherwise, in the event that any fixed dollar floor in respect of any Availability-based test or trigger in the Revolving Credit Agreement is increased (including pursuant to an increase in the Revolving Credit Facility pursuant to Section 2.18 of the Revolving Credit Agreement), each fixed dollar floor in respect of each corresponding Availability-based test or trigger in each of this Agreement and the other Loan Documents (including, without limitation, those set forth in the definitions of “Dominion Trigger Period”, “Field Exam Trigger Event”, “Reporting Trigger Period”, “Payment Conditions” and Section 8.12) shall automatically increase by the equivalent amount without the need for any further action.

1.08 Interest 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 the Term SOFR Reference Rate or Term SOFR, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto, including whether the composition or characteristics of any such alternative, successor or replacement rate will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate or Term SOFR, 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 the Term SOFR Reference Rate or Term SOFR, any alternative, successor or replacement rate and/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 reasonable discretion to ascertain the Term SOFR Reference Rate or Term SOFR, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Term Loan Lender or any other person or entity 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.

ARTICLE II
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Term Loans.

(a) Upon the terms and subject to the conditions herein set forth, each Term Loan Lender, severally and not jointly with any other Term Loan Lender, agrees to make a Term Loan to the Borrowers, in the amount set forth opposite such Term Loan Lender's name in Schedule 2.01 under the heading "Term Loan Commitments." The Term Loan Commitments on the Closing Date (prior to funding) are \$25,000,000. The Term Loan Commitments shall expire upon the funding of the Term Loans by the applicable Term Loan Lenders. Once repaid, whether such payment is voluntary, scheduled or mandatory, no portion of the Term Loans may be reborrowed.

(b) The obligations of the Term Loan Lenders hereunder to make the Term Loans and to make payments pursuant to Section 2.01(c)(iii) and Section 11.04(c) are several and not joint. The failure of any Term Loan Lender to make any Term Loan, to fund any such participation or to make any payment under Section 2.01(c)(iii) or Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Term Loans, to purchase its participation or to make its payment under Section 2.01(c)(iii) or Section 11.04(c).

(c) Protective Advances.

(i) The Administrative Agent shall be authorized by each Borrower and the Term Loan Lenders from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make advances to the Borrowers on behalf of the Term Loan Lenders (any of such Loans are herein referred to as "Protective Advances") in an aggregate amount not to exceed \$1,000,000, which the Administrative Agent deems necessary or desirable to (a) preserve or protect Collateral or any portion thereof or (b) to enhance the likelihood of, or maximize the amount of, repayment of the Term Loans and other Term Loan Exposure. All Protective Advances made by the Administrative Agent constitute Obligations, secured by the Collateral and shall be treated for all purposes as Term Loans.

(ii) Each Term Loan Lender shall participate in each Protective Advance on a ratable basis. Required Lenders may at any time revoke the Administrative Agent's authority to make further Protective Advances to any or all Borrowers by written notice to the Administrative Agent. Absent such revocation, the Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. The Administrative Agent may request the Term Loan Lenders to make a Loan to repay a Protective Advance. At any other time, the Administrative Agent may require the Term Loan Lenders to fund their risk participations described in Section 2.01(c)(iii).

(iii) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default or Event of Default), each Term Loan Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance equal to the proportion of the Term Loan Exposure of such Term Loan Lender to the Term Loan Exposure of all Term Loan Lenders (its "Ratable Share") of such Protective Advance. Each Term Loan Lender shall transfer (a "Transfer") the amount of such Term Loan Lender's purchased interest and participation promptly when requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, but in any case not later than 3:00 p.m. on the Business Day notified (if notice is provided by the Administrative Agent prior to 12:00 p.m. and otherwise on the immediately following Business Day (the "Transfer Date")). Transfers may occur during the existence of a Default or Event of Default. Such amounts transferred to the Administrative Agent shall be applied against the amount of the applicable Protective Advance and shall constitute Loans of such Term Loan Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Term Loan Lender on such Transfer Date, the Administrative Agent shall be entitled to recover such amount on demand from such Term Loan Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Overnight Rate for three (3) Business Days and thereafter at the Base Rate. From and after the date, if any, on which any Term Loan Lender is required to fund, and funds, its interest and participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Term Loan Lender, such Term Loan Lender's Ratable Share of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

(d) Determination of the Borrowing Base. The Borrowing Base shall be established and adjusted from time to time as follows:

(i) The amount of the Borrowing Base shall initially be established in each Borrowing Base Certificate delivered to the Administrative Agent by the Borrower Agent pursuant to Section 7.02(a). The Administrative Agent shall have the right, at any time and from time to time on and after the Closing Date in good faith and in the exercise of its Credit Judgment to establish, modify or eliminate Reserves. The Borrowing Base shall also be subject to adjustment by the Administrative Agent in its Credit Judgment (A) to reflect any determination that the amount of the Borrowing Base set forth in a Borrowing Base Certificate differs materially from the actual Borrowing Base determined by the Administrative Agent in its Credit Judgment; (B) to reflect Administrative Agent's reasonable estimate of declines in value of Borrowing Base Assets due to collections received in the Concentration Account or otherwise; (C) to reflect changes in advance rates as a result of changes in dilution, quality, mix and other factors affecting the Borrowing Base Assets, (D) to the extent any information or calculation does not comply with this Agreement and (E) to reflect other adjustments in accordance with the terms of this Agreement.

(ii) In connection with any adjustment to the Borrowing Base, the Administrative Agent shall (A) promptly notify the Borrower Agent in writing (including via e-mail) whenever the Administrative Agent determines that the amount of the Borrowing Base set forth in a Borrowing Base Certificate differs materially from the actual Borrowing Base determined by the Administrative Agent in its Credit Judgment and (B) discuss with Borrower Agent (1) the basis for any such difference and (2) any changes made or proposed to be made to the amount of the Borrowing Base, including the reasons for any imposition of or changes in Reserves or any change in advance rates or eligibility criteria with respect to Borrowing Base Assets. The determination of the Borrowing Base by the Administrative Agent shall be presumptively correct and shall constitute the Borrowing Base for all purposes hereunder.

2.02 [Reserved]

2.03 [Reserved]

2.04 [Reserved]

2.05 Repayment of Loans.

(a) Term Loans.

(i) The Borrowers shall repay the principal amount of the Term Loans on the first Business Day of each January, April, July and October of each year, commencing February 1, 2024, in individual instalments equal to \$625,000.

(ii) The Borrowers shall repay to the Administrative Agent for the account of each the Term Loan Lenders on the Maturity Date the aggregate principal amount of and all accrued and unpaid interest on all Term Loans outstanding on such date.

(b) Protective Advances. The Borrowers shall repay all Protective Advances on the earlier to occur of (i) demand by the Administrative Agent and (ii) the Maturity Date.

(c) Other Obligations. Obligations other than principal and interest on the Term Loans, including Extraordinary Expenses, shall be paid by Borrowers as specifically provided herein and in any other applicable Loan Documents or, if no payment date is specified, on demand.

2.06 Prepayments.

(a) Optional. The Borrowers may, upon written notice substantially in the form of Exhibit F, to the Administrative Agent from the Borrower Agent, at any time or from time to time voluntarily prepay Term Loans in whole or in part; provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) Business Day prior the date of prepayment and (B) any prepayment shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. The Administrative Agent will promptly notify each Term Loan Lender of its receipt of each such notice, and of the amount of such Term Loan Lender's ratable portion of such prepayment (based on such Term Loan Lender's Applicable Percentage in respect of the Term Loan Facility). If such notice is given by the Borrower Agent, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Subject to Section 2.06(b), all optional prepayments shall be paid to the Administrative

Agent for application first to the prepayment of any outstanding Protective Advances until paid in full and second to the prepayment of remaining installments of principal of the Term Loans in direct order of maturity until paid in full in accordance with each Term Loan Lender's Applicable Percentage, and in each case shall be accompanied by all accrued interest on the amount prepaid, together with all amounts (including any applicable prepayment premium) due under the Fee Letter.

(b) Mandatory.

(i) [Reserved.]

(ii) Asset Dispositions. Subject to the Intercreditor Agreement, if a Disposition occurs with respect to any property of any Loan Party or any of its Subsidiaries (other than any Disposition of property permitted by Section 8.05(a), (c), (e), (f), (g), (h) (to the extent such Disposition is a discount of or compromise of overdue accounts in the Ordinary Course of Business), (i) or (j) which results in the realization by such Person of Net Cash Proceeds in excess of \$1,000,000 in any calendar year, the Borrowers shall prepay an aggregate principal amount of Term Loans equal to 100% of such Net Cash Proceeds immediately upon receipt thereof by such Person.

(iii) Extraordinary Receipts. Subject to the Intercreditor Agreement, upon receipt of any cash by (or paid to or for the account of) any Loan Party or its Subsidiaries not in the ordinary course of business in excess of \$1,000,000 in any calendar year, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), indemnity payments, purchase price adjustments, judgments, settlements or other payments in connection with any cause of action, but as long as no Default or Event of Default is outstanding excluding Excluded Receipts, and not otherwise included in this Section 2.06(b), the Borrowers shall prepay an aggregate principal amount of Term Loans equal to 100% of the cash amount thereof (net of all reasonable out-of-pocket expenses or other amounts required to be paid in connection therewith) immediately upon receipt.

(c) Application of Mandatory Prepayments. Subject to Section 9.03:

(i) Each prepayment of Term Loans pursuant to the provisions of Section 2.06(b) shall be applied to the Term Loan Facility in the manner set forth in clause (ii) below. Such prepayments shall be paid to the Term Loan Lenders in accordance with their respective Applicable Percentage in respect of the relevant Term Loan Facility.

(ii) Prepayments of the Term Loan Facility made pursuant to Section 2.06(b) shall be applied first to the prepayment of any outstanding Protective Advances until paid in full and second to the prepayment, on a pro rata basis, of remaining installments of principal of the Term Loans until paid in full in accordance with each Term Loan Lender's Applicable Percentage, and in each case shall be accompanied by all accrued interest on the amount prepaid, together with all amounts (including any applicable prepayment premium) due under the Fee Letter.

(d) Reinvestment. Notwithstanding the foregoing, with respect to any Net Cash Proceeds realized in connection with a Disposition described in Section 2.06(b)(ii), at the election of the Borrowers (as notified by the Borrower Agent to the Administrative Agent on or prior to the date of such Disposition or receipt of proceeds) and so long as no Default shall have occurred and be continuing, such Loan Party or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets within 180 days after the receipt of such Net Cash Proceeds (the consummation of such reinvestment to be certified by the Borrowers in writing to the Administrative Agent within such period); provided, however, that any Net Cash Proceeds not so reinvested shall be immediately applied to the prepayment of the Term Loans as set forth in Section 2.06(c) and such amounts shall be held as Cash Collateral until the earlier of reinvestment or the expiration of 180 days from receipt.

2.07 [Reserved]

2.08 Interest.

(a) Subject to the provisions of subsection (b) and Section 3.03 below, (i) each Term Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to Adjusted Term SOFR plus the Applicable Margin and (ii) each other Obligation (including, to the extent not prohibited by applicable Law, interest not paid when due) shall bear interest on the unpaid amount thereof at a rate per annum equal to the Prime Rate plus the Applicable Margin.

(b) If any amount payable by the Borrowers under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(i) If any other Event of Default exists, then the Administrative Agent may, and upon the request of the Required Lenders shall, require (and notify the Borrower Agent thereof) that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Term Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto, the Maturity Date and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law

2.09 Fees.

(a) Fee Letter. The Borrowers agree to pay to the Administrative Agent, for its own account, the fees payable in the amounts and at the times set forth in the Fee Letter.

(b) Generally. All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution to the Term Loan Lenders entitled thereto. Fees paid shall not be refundable under any circumstances.

2.10 Computation of Interest and Fees. All computations of interest for Term Loans accruing interest at the Prime Rate shall be made on a basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Term Loan or other Obligation not paid when due for the day on which the Term Loan is made or such Obligation is due and unpaid, and shall not accrue on a Term Loan, or any portion thereof, or such Obligation for the day on which the Term Loan, or such portion thereof, or Obligation is paid, provided that any Term Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. 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 Borrower Agent and the Term Loan Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.11 Evidence of Debt. The Term Loans by each Term Loan Lender shall be evidenced by one or more accounts or records maintained by the Administrative Agent (the "Loan Account") in the ordinary course of business. In addition, each Term Loan Lender may record in such Term Loan Lender's internal records, an appropriate notation evidencing the date and amount of each Term Loan from such Term Loan Lender, each payment and prepayment of principal of any such Term Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Term Loan Lender. The accounts or records maintained by the Administrative Agent and each Term Loan Lender shall be conclusive absent manifest error of the amount of the Term Loans made by the Term Loan Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Term Loan Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence

of manifest error. Upon the request of any Term Loan Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Term Loan Lender (through the Administrative Agent) a Note, which shall evidence such Term Loan Lender's Loans in addition to such accounts or records. Each Term Loan Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

2.12 Payments Generally; the Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. Subject to Section 9.03, the Administrative Agent will promptly distribute to each Term Loan Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Term Loan Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. may, in the Administrative Agent's sole discretion, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Payments by Borrower. Unless the Administrative Agent shall have received written notice from the Borrower Agent prior to the time at which any payment is due to the Administrative Agent for the account of the Term Loan Lenders hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may (but shall not be required to) in reliance upon such assumption, distribute to the Term Loan Lenders the amount due. With respect to any payment that the Administrative Agent makes to any Term Loan Lender or any other Secured Party as to which the Administrative Agent determines (in its sole and absolute discretion) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made the corresponding payment to the Administrative Agent; (2) the Administrative Agent has made a payment in excess of the amount(s) received by it from Borrowers either individually or in the aggregate (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Secured Parties severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Secured Party, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Term Loan Lender or any Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) [Reserved]

(d) Obligations of Lenders Several. The obligations of the Term Loan Lenders hereunder to make Term Loans and to make payments pursuant to Section 2.01(c)(iii) and Section 11.04(c) are several and not joint. The failure of any Term Loan Lender to make any Term Loan, to fund any such participation or to make any payment under Section 2.01(c)(iii) or Section 11.04(c) on any date required hereunder shall not relieve any other Term Loan Lender of its corresponding obligation to do so on such date, and no Term Loan Lender shall be responsible for the failure of any other Term Loan Lender to so make its Term Loan, to purchase its participation or to make its payment under Section 2.01(c)(iii) or Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Term Loan Lender to obtain the funds for any Term Loan in any particular place or manner or to constitute a representation by any Term Loan Lender that it has obtained or will obtain the funds for any Term Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied as provided in Section 2.06(c).

2.13 Sharing of Payments by Lenders. If any Term Loan Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) the Obligations due and payable to such Term Loan Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and

payable to such Term Loan Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Term Loan Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Term Loan Lenders hereunder and under the other Loan Documents at such time obtained by all the Term Loan Lenders at such time or (b) the Obligations owing (but not due and payable) to such Term Loan Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Term Loan Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Term Loan Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations owing (but not due and payable) to all Term Loan Lenders hereunder and under the other Loan Documents at such time obtained by all of the Term Loan Lenders at such time, then, in each case under clauses (a) and (b) above, the Term Loan Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Term Loans of the other Term Loan Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Term Loan Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Term Loan Lenders or owing (but not due and payable) to the Term Loan Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of any Loan Party pursuant to and in accordance with the express terms of this Agreement, (B) the application of Cash Collateral provided for in Section 2.16, or (C) any payment obtained by a Term Loan Lender as consideration for the assignment of or sale of a participation in any of its Term Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Term Loan Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Term Loan Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Additional Term Loans.

(a) Request for Additional Term Loans. Provided no Default or Event of Default then exists or would arise therefrom, upon notice to the Administrative Agent (which shall promptly notify the Term Loan Lenders), the Borrower Agent may from time to time, request commitments for additional Term Loans following the Closing Date by an amount (for all such requests) not exceeding \$5,000,000; provided, that (i) any such request for an increase shall be in a minimum amount of \$2,500,000 and (ii) the Borrower Agent may make a maximum of two such requests. At the time of sending such notice, the Borrower Agent (in consultation with the Administrative Agent) shall specify the time period within which each Term Loan Lender is requested to respond (which shall in no event be less than five (5) Business Days from the date of delivery of such notice to the Term Loan Lenders).

(b) Term Loan Lender Elections to Extend. Each Term Loan Lender shall notify the Administrative Agent within such time period whether or not it agrees to provide a commitment for additional Term Loans and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Term Loan Lender not responding within such time period shall be deemed to have declined to increase its Term Loan Commitment. For the avoidance of doubt, no Term Loan Lender shall have any obligation to provide a commitment for additional Term Loans under this Section 2.14.

(c) Notification by Administrative Agent; Additional Term Loan Lenders. The Administrative Agent shall notify the Borrower Agent and each Term Loan Lender of the Term Loan Lenders' responses to each request made hereunder. To achieve the full amount of commitments requested, and subject to the approval of the Administrative Agent (which the Administrative Agent may withhold in its sole discretion) to the extent that the existing Term Loan Lenders decline to provide commitments for additional Term Loans in the aggregate amount requested by the Borrower Agent, the Borrower Agent may invite Eligible Assignees to become Term Loan Lenders hereunder (each such Term Loan Lender, an "Additional Term Loan Commitment Lender") and to issue commitments in an amount equal to the amount of the additional Term Loans requested by the Borrower Agent and not accepted by the existing Term Loan Lenders,

provided, however, that without the consent of the Administrative Agent, at no time shall the commitment for such additional Term Loans of any Additional Term Loan Commitment Lender be less than \$2,500,000.

(d) Effective Date and Allocations. If commitments are provided with respect to such additional Term Loans are increased in accordance with this Section, the Administrative Agent, in consultation with the Borrower Agent, shall determine the effective date (the “Increase Effective Date”) and the final allocation of such additional commitments. The Administrative Agent shall promptly notify the Borrower Agent and the Term Loan Lenders of the final allocation of such commitments and the Increase Effective Date and on the Increase Effective Date Schedule 2.01 shall be deemed modified, without further action, to reflect all Term Loans advanced under this Agreement and Applicable Percentages of the Term Loan Lenders.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such commitments for additional Term Loans,

(i) the Borrower Agent shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party

(A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and

(B) in the case of the Borrower Agent, certifying that, before and after giving effect to such increase,

(I) the representations and warranties contained in Article VI and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date and in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, and except that for purposes of this Section 2.14, the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (a), respectively, of Section 7.01, and

(II) no Default or Event of Default exists or would arise therefrom,

(ii) the Borrowers, the Administrative Agent, and any Additional Term Loan Commitment Lender shall have executed and delivered a Lender Joinder Agreement;

(iii) the Borrowers shall have paid such fees and other compensation to the Additional Term Loan Commitment Lenders and to any Term Loan Lenders providing such commitments for additional Term Loans and to the Administrative Agent or any arranger as the Borrowers and each such Person shall agree;

(iv) the Borrower Agent shall deliver an opinion or opinions, in form and substance reasonably satisfactory to the Administrative Agent, from counsel to the Borrower reasonably satisfactory to the Administrative Agent and dated such date;

(v) the Borrower Agent and the Additional Term Loan Commitment Lender shall have delivered such other instruments, documents and agreements as the Administrative Agent may reasonably have requested;

(vi) the Administrative Agent shall have received such other documents and items as it may reasonably request.

On the Increase Effective Date, there shall be an automatic adjustment to the Applicable Percentage of each Term Loan Lender to reflect the new Applicable Percentages of the Term Loan Lenders.

(f) **Other Provisions.** The additional Term Loans provided by any Term Loan Lender or any Additional Term Loan Commitment Lender under this Section 2.14:

(i) shall bear interest at the rates provided for with respect to the Term Loans advanced on the Closing Date (as such rate may be amended), and

(ii) shall otherwise be on the same terms as Term Loans advance on the Closing Date as set forth in, and be entitled to the benefits of, this Agreement and the other Loan Documents (including, without limitation, being subject to the Borrowing Base).

(g) **Conflicting Provisions.** This Section shall supersede any provisions in Sections 2.13 or 11.01 to the contrary.

2.15 Nature and Extent of Each Borrower's Liability.

(a) **Joint and Several Liability.** Each Borrower agrees that it is jointly and severally liable for all Obligations, and all agreements under the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until the Facility Termination Date, 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 Borrower is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by the Administrative Agent or any Term Loan Lender with respect thereto; (iii) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by the Administrative Agent or any Term Loan Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Borrower; (v) any election by the Administrative Agent or any Term Loan Lender in proceeding under Debtor Relief Laws for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of the Administrative Agent or any Term Loan Lender against any Borrower for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except full payment in cash or Cash Collateralization of all Obligations on the Facility Termination Date.

(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 the Administrative Agent or Term Loan Lenders to marshal assets or to proceed against any Borrower, 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 full payment of all Obligations. It is agreed among each Borrower, the Administrative Agent and Term Loan Lenders that the provisions of this Section 2.15 are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, the Administrative Agent and Term Loan Lenders would decline to make Term Loans. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) The Administrative Agent and Lenders 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 2.15. If, in taking any action in connection with the exercise of any rights or remedies, the Administrative Agent or any Term Loan Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim of forfeiture of such rights or remedies based upon it, even if the action may result in loss of any rights of subrogation that such Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of the Administrative Agent or any Term Loan Lender to seek a deficiency judgment against any Borrower shall not impair any other 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 nonjudicial 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 Person. The 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 the Administrative Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether the 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 2.15, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which the Administrative Agent or any Term Loan Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Borrower's liability under this Section 2.15 shall be limited to the greater of (i) all amounts for which such Borrower is primarily liable, as described below, and (ii) such Borrower's Allocable Amount.

(ii) If any Borrower makes a payment under this Section 2.15 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 prior to 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 2.15 without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(d) Direct Liability; Separate Borrowing Availability. Nothing contained in this Section 2.15 shall limit the liability of any Borrower to pay Term Loans made directly or indirectly to that Borrower (including Term Loans advanced to any other Borrower and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), 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.

(e) Joint Enterprise. Each Borrower has requested that the Administrative Agent and Term Loan Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. The Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. The Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the Term Loan Facility, all to their mutual advantage. The Borrowers acknowledge that the Administrative Agent's and Term Loan Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.

(f) Subordination. Each Loan Party hereby agrees that any intercompany Indebtedness or other intercompany payables, receivables or obligation, or intercompany advances directly or indirectly made by or owed to such Loan Party by any other Loan Party (collectively, "Intercompany Debt"), of whatever nature at any time outstanding shall be subordinate and subject in right of payment to the prior payment in full in cash of the Obligations. Each Loan Party hereby agrees that it will not, while any Event of Default is continuing, accept any payment, including by offset, on any Intercompany Debt until the Facility Termination Date, in each case, except with the prior written consent of the Administrative Agent. In the event that any payment on any Intercompany Debt shall be received by a Loan Party other than as permitted by this Section 2.15(f) before the Facility Termination Date, such Loan Party shall receive such payments and hold the same in trust for, segregate the same from its own assets and shall immediately pay over to, the Administrative Agent for the benefit of the Administrative Agent and the Term Loan Lenders all such sums to the extent necessary so that the Administrative Agent and the Term Loan Lenders shall have received Payment in Full, in cash, all Obligations owed or which may become owing. Upon any payment or distribution of any assets of any Loan Party of any kind or character, whether in cash, property or securities by set-off, recoupment or otherwise, to creditors in any liquidation or other winding-up of such Loan Party or in the event of any proceeding under the Debtor Relief Laws, the Administrative Agent and the Term Loan Lenders shall first be entitled to receive payment in full in cash, in accordance with the terms of the Obligations and of this Agreement, of all amounts payable under or in respect of such Obligations, before any payment or distribution is made on, or in respect of, any Intercompany Debt, in any such proceeding, any distribution or payment, to which the Administrative Agent or any Term Loan Lender would be entitled except for the provisions hereof shall be paid by such Loan Party, or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution directly to the Administrative Agent (for the benefit of the Administrative Agent and the Term Loan Lenders) to the extent necessary to

pay all such Obligations in full in cash, after giving effect to any concurrent payment or distribution to the Administrative Agent and the Term Loan Lenders (or to the Administrative Agent for the benefit of the Administrative Agent and the Term Loan Lenders).

(g) Borrower Agent.

(i) Each Loan Party hereby irrevocably appoints and designates (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to Administrative Agent or otherwise becoming a Guarantor hereunder shall be deemed to have irrevocably appointed and designated) Purple Innovation, LLC ("Borrower Agent") as its representative and agent and attorney-in-fact for all purposes under the Loan Documents, including, as applicable, requests for Term Loans, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base and financial reports, 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 the Administrative Agent or any Term Loan Lender.

(ii) Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any Loan Party by the Borrower Agent shall be deemed for all purposes to have been made by such Loan Party and shall be binding upon and enforceable against such Loan Party to the same extent as if made directly by such Loan Party.

(iii) The Borrower Agent hereby accepts the appointment by each Loan Party hereunder to act as its agent and attorney-in-fact.

(iv) The Administrative Agent and Term Loan Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower or other Loan Party. The Administrative Agent and Term Loan Lenders may give any notice to or communication with a Loan Party hereunder to the Borrower Agent on behalf of such Loan Party. Each of the Administrative Agent and the Term Loan Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Loan Party agrees (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to Administrative Agent or otherwise becoming a Guarantor hereunder shall be deemed to have agreed) that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

2.16 Cash Collateral.

(a) Certain Credit Support Events. If (i) any Protective Advance shall not have been funded by the Term Loan Lenders upon demand by the Administrative Agent or (ii) the Borrowers shall be required to provide Cash Collateral pursuant to Section 9.02, the Borrowers shall immediately (in the case of clause (ii) above) or within one (1) Business Day (in the case of clause (i) above) following any request by the Administrative Agent, provide Cash Collateral in an amount reasonably required by the Administrative Agent.

(b) Grant of Security Interest. The Borrowers hereby grant to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent and the Term Loan Lenders, and agree to maintain, subject to the Intercreditor Agreement, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.16(c).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided in respect of Protective Advances shall be held and applied to the specific Protective Advances for which the Cash Collateral was so provided and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require the Loan Parties or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower Agent or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Term Loan Lender, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Tax Indemnification by the Borrowers.

(i) Without limiting the provisions of subsection (a) or (b) above, each Loan Party shall, and does hereby, indemnify the Administrative Agent and each Term Loan Lender, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Loan Parties or the Administrative Agent or paid by the Administrative Agent or such Term Loan Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Loan Party shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Term Loan Lender for any reason fails to pay to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower Agent by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Term Loan Lender, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Term Loan Lender shall, and does hereby, indemnify the Loan Parties and the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrowers or the Administrative Agent) incurred by or asserted against the Loan Parties or the Administrative Agent by any Governmental Authority as a result of the failure by such Term Loan Lender, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Term Loan Lender, as the case may be, to the Borrower Agent or the Administrative Agent pursuant to subsection (e). Each Term Loan Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Term Loan Lender, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the occurrence of the Facility Termination Date.

(d) Evidence of Payments. Upon request by the Borrower Agent or the Administrative Agent, as the case may be, after any payment of Taxes by the Loan Parties or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the

Borrower Agent shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower Agent, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower Agent or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Term Loan Lender shall deliver to the Borrower Agent and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower Agent or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower Agent or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Term Loan Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Term Loan Lender by the Loan Parties pursuant to this Agreement or otherwise to establish such Term Loan Lender's status for withholding tax purposes in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if a Borrower is resident for tax purposes in the United States,

(A) any Term Loan Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower Agent and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower Agent or the Administrative Agent as will enable the Borrower Agent or the Administrative Agent, as the case may be, to determine whether or not such Term Loan Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower Agent and the 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 request of the Borrower Agent or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN-E (or, if applicable W-8BEN) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of Internal Revenue Service Form W-8ECI,

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(III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(IV) 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 to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower Agent or the Administrative Agent to determine the withholding or deduction required to be made; and

(C) 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 Term Loan 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 Term Loan Lender shall deliver to the Borrower Agent and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by any Borrower or the 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 any Borrower or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of this Section 3.01, "Laws" shall include FATCA

(iii) Each Term Loan Lender shall promptly (A) notify the Borrower Agent and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Term Loan Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Loan Parties or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Term Loan Lender.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Term Loan Lender, or have any obligation to pay to any Term Loan Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Term Loan Lender, as the case may be. If the Administrative Agent, any Term Loan Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by any Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent or such Term Loan Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Administrative Agent, such Term Loan Lender, agrees to repay the amount paid over to any Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Term Loan Lender in the event the Administrative Agent or such Term Loan Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Term Loan Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

3.02 Illegality. If any Term Loan Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Term Loan Lender or its applicable lending office to make, maintain or fund Term Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, then, upon notice thereof by such Term Loan Lender to the Borrower Agent (through the Administrative Agent) (an "Illegality Notice"), any obligation of such Term Lender to determine interest based on SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR shall be suspended until each affected Term Loan Lender notifies the Administrative Agent and the Borrower Agent that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, interest on the Term Loans shall accrue and be payable at the Prime Rate plus the Applicable Margin until such Illegality notice is revoked of Administrative Agent implements a Term SOFR Successor Rate.

3.03 Inability to Determine Rates; Effect of Benchmark Transition Event.

(a) In the event that the Administrative Agent or any Term Loan Lender shall have determined (i) that reasonable means do not exist for ascertaining Term SOFR or (ii) that there has occurred a public statement or other publication by or on behalf of the Term SOFR Administrator or SOFR Administrator (or the regulatory supervisor for the administrator of such rate, the Board of Governors, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such rate, a resolution authority with jurisdiction over the administrator for such rate or a court or an entity with similar insolvency or resolution authority over the administrator for such rate) that (x) such administrator has ceased or will cease to provide the three-month tenor of such rate permanently or indefinitely or (y) the three-month tenor of such rate is or will no longer be representative of the underlying market and economic reality that such rate is intended to measure and that representativeness will not be restored, then the Administrative Agent or such Term Loan Lender shall give Borrower Agent prompt written, telephonic or electronic notice of the determination of such effect. Upon receipt of such notice, any outstanding affected Term Loans bearing interest at a rate based on Term SOFR will be deemed to have been converted

into Term Loans bearing interest at a rate equal to the Prime Rate plus the Applicable Margin until the Administrative Agent or such Term Loan Lender revokes such notice, or otherwise implements any Term SOFR Successor Rate.

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

3.04 Increased Costs.

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

(i) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D)), 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 Term Loan Lender;

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(ii) subject any Term Loan Lender 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) with respect to this Agreement, or any Term Loan made by it, or change the basis of taxation of payments to such Term Loan Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Term Loan Lender); or

(iii) impose on any Term Loan Lender any other condition, cost or expense (other than taxes) affecting this Agreement or Term Loans made by such Term Loan Lender;

and the result of any of the foregoing shall be to increase the cost to such Term Loan Lender of making or maintaining any Term Loan the interest on which is determined by reference to Term SOFR (or of maintaining its obligation to make any such Term Loan), or to increase the cost to such Term Loan Lender, or to reduce the amount of any sum received or receivable by such Term Loan Lender (whether of principal, interest or any other amount) then, upon request of such Term Loan Lender, the Loan Parties will pay to such Term Loan Lender such additional amount or amounts as will compensate such Term Loan Lender for such additional costs incurred or reduction suffered.

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

(c) Certificates for Reimbursement. A certificate of a Term Loan Lender setting forth the amount or amounts necessary to compensate such Term Loan Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower Agent shall be conclusive absent manifest error. The Loan Parties shall pay such Term Loan Lender 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 Term Loan Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Term Loan Lender’s right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Term Loan Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Term Loan Lender notifies the Loan

Parties of the Change in Law giving rise to such increased costs or reductions and of such Term Loan 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).

3.05 Compensation for Losses. Upon demand of any Term Loan Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Term Loan Lender for and hold such Term Loan Lender harmless from any loss, cost or expense incurred by it as a result of: any failure by Borrowers (for a reason other than the failure of such Term Loan Lender to make a Term Loan) to prepay, borrow, continue or convert any Term Loan on the date or in the amount notified by the Borrower Agent, including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Term Loan Lender in connection with the foregoing.

A certificate of the Administrative Agent or a Term Loan Lender delivered to the Borrower Agent setting forth the amount that the Administrative Agent or such Term Loan Lender is entitled to receive pursuant to this Section 3.05 shall be conclusive absent manifest error. The Borrowers shall pay such amount to the Administrative Agent or such Term Loan Lender, as the case may be, within ten (10) days after receipt thereof.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Term Loan Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Term Loan Lender or any Governmental Authority for the account of any Term Loan Lender pursuant to Section 3.01, or if any Term Loan Lender gives a notice pursuant to Section 3.02, then such Term Loan Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Term Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Term Loan Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Term Loan Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Term Loan Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Term Loan Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Term Loan Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Term Loan Lender or any Governmental Authority for the account of any Term Loan Lender pursuant to Section 3.01, the Borrowers may replace such Term Loan Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive the resignation of the Administrative Agent the replacement of any Term Loan Lender and the occurrence of the Facility Termination Date.

ARTICLE IV SECURITY AND ADMINISTRATION OF COLLATERAL

4.01 Security. As security for the full and timely payment and performance of all Obligations, Borrower Agent shall, and shall cause each other Loan Party to, on or before the Closing Date, do or cause to be done all things necessary in the opinion of the Administrative Agent and its counsel to grant to the Administrative Agent for the benefit of the Secured Parties a duly perfected first priority security interest in all Collateral (except as expressly permitted hereunder or in the Intercreditor Agreement) and subject to no prior Lien or other encumbrance or restriction on transfer, except as expressly permitted hereunder and in the Intercreditor Agreement. Without limiting the foregoing, on the Closing Date, Borrower Agent shall deliver, and shall cause each Loan Party to deliver, to the Administrative Agent, in form and substance reasonably acceptable to the Administrative Agent, (a) the Security Agreement, which shall pledge to the Administrative Agent for the benefit of the Secured Parties certain personal property of the Borrowers and the other Loan Parties more particularly described therein and (b) Uniform Commercial Code financing statements in form, substance and number as requested by the Administrative Agent, reflecting the Lien in favor of the Secured Parties on the Collateral, and shall take such further action and deliver or cause to be delivered such further documents as required by the Security Instruments or otherwise as the Administrative Agent may request to effect the transactions contemplated by this Article IV.

4.02 Collateral Administration.

(a) Administration of Accounts.

(i) Records and Schedules of Accounts. Each Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to the Administrative Agent sales, collection, reconciliation and other reports in form satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may request.

(ii) Taxes. If an Account of any Borrower includes a charge for any Taxes, Administrative Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Borrower and to charge Borrowers therefor; provided, however, that neither the Administrative Agent nor Lenders shall be liable for any Taxes that may be due from Borrowers or with respect to any Collateral.

(iii) Account Verification. Whether or not a Default or Event of Default exists, the Administrative Agent shall have the right at any time, in the name of the Administrative Agent, any designee of the Administrative Agent or (during the continuance of any Event of Default) any Borrower, to verify the validity, amount or any other matter relating to any Accounts of Borrowers by mail, telephone or otherwise; provided that if not Default or Event of Default is outstanding, the Administrative Agent shall give the Borrower at least two (2) Business Days notice prior to contacting any customer to verify any matter relating to any Accounts whereby the Borrowers will assist in facilitating customary account confirmation procedures on behalf of and for the exclusive benefit of the Administrative Agent. Borrowers shall cooperate fully with the Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

(iv) Proceeds of Collateral. Subject to the Post-Closing Agreement, Borrowers shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Controlled Deposit Account (or a lockbox relating to a Controlled Deposit Account). If any Borrower or Subsidiary receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for the Administrative Agent and promptly (not later than the next Business Day but subject to the Post-Closing Agreement) deposit same into a Controlled Deposit Account.

(v) Extensions of Time for Payment. In addition, upon the occurrence and during the continuance of an Event of Default, other than in the Ordinary Course of Business and in amounts which are not material to such Borrower, each Borrower will not (i) grant any extension of the time for payment of any Account, (ii) compromise or settle any Account for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Account, (iv) allow any credit or discount whatsoever on any Account or (v) amend, supplement or modify any Account in any manner that could adversely affect the value thereof.

(b) Administration of Inventory.

(i) Records and Reports of Inventory. Each Borrower shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to the Administrative Agent inventory and reconciliation reports in form satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may reasonably request. Each Borrower shall conduct a periodic cycle count on a monthly basis consistent with historical practices, and shall provide to the Administrative Agent a report based on each such count promptly upon completion thereof, together with such supporting information as the Administrative Agent may reasonably request. The Administrative Agent may participate in and observe each periodic cycle count. The Administrative Agent, in its reasonable discretion if any Event of Default is continuing, may cause physical inventories or additional such periodic cycle counts to be taken as the Administrative Agent determines (each, at the expense of the Loan Parties).

(ii) Returns of Inventory. No Borrower shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default or Event of Default exists or would result therefrom; and (c) the Administrative Agent is promptly notified if the aggregate value of all Inventory returned in any month exceeds \$1,000,000.

(iii) Acquisition, Sale and Maintenance. No Borrower shall acquire or accept any Inventory on consignment or approval, and shall take all steps to assure that all Inventory is produced in accordance with applicable Law, including the FLSA. No Borrower shall sell any Inventory on consignment or approval or any other basis (for the avoidance of doubt, this does not include sales utilizing the services of fulfillment companies, such as Amazon) under which the customer may return or require a Borrower to repurchase such Inventory except returns by customers pursuant to the Borrowers' customer return policy in the Ordinary Course of Business. The Borrowers shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all applicable Laws, and shall make current rent payments (within applicable grace periods provided for in leases) at all leased locations where any Collateral is located.

(c) Credit Card Notifications. On the Closing Date, deliver to the Administrative Agent copies of notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit G which have been executed on behalf of such Loan Party for delivery to such Loan Party's Credit Card Issuers and Credit Card Processors listed on Schedule 6.19 (with such delivery being effected promptly following the Closing Date, and evidence of such delivery received by Administrative Agent within five (5) Business Days following the Closing Date). So long as no Dominion Trigger Period is continuing, the Loan Parties may add or replace Credit Card Processors and Credit Card Issuers and shall upon such addition or replacement provide to Administrative Agent no later than five (5) Business Days after the time of entering into such new arrangements, applicable Credit Card Notifications.

4.03 After Acquired Property; Further Assurances.

(a) New Deposit Accounts and Securities Accounts. Concurrently with or prior to the opening of any Deposit Account, Securities Account or Commodity Account by any Loan Party, other than any Excluded Deposit Account, such Loan Party shall deliver to the Administrative Agent a Control Agreement covering such Deposit Account, Securities Account or Commodity Account, duly executed by such Loan Party, the Administrative Agent and the applicable Controlled Account Bank, securities intermediary or financial institution at which such account is maintained.

(b) Future Locations Subject to Material Third-Party Agreements. With respect to any location of Collateral subject to a Material Third-Party Agreement entered into after the Closing Date, each Loan Party shall use commercially reasonable efforts to provide the Administrative Agent with Lien Waivers with respect to the premises subject to such Material Third-Party Agreements. Loan Parties acknowledge that if such Lien Waivers are not delivered, then, at the election of the Administrative Agent, all of the Collateral at such locations may be deemed ineligible for inclusion in the Borrowing Base or the Administrative Agent may establish a Rent and Charges Reserve for such location.

(c) Acquired Real Property. If any Loan Party acquires, owns or holds an interest in any fee-owned Real Property not constituting Excluded Real Property, the Borrower Agent will promptly (and in any event within ten (10) days of the acquisition thereof (or such longer period as the Administrative Agent may agree)) notify the Administrative Agent in writing of such event, identifying the property or interests in question, and, the Loan Party will, or will cause such Subsidiary to, within sixty (60) days or such longer period as the Administrative Agent may reasonably agree, (i) deliver to the Administrative Agent, in each case in form and substance reasonably satisfactory to the Administrative Agent, Mortgages and Mortgage Related Documents with respect to such Real Property.

(d) UCC Authorization. The Administrative Agent is hereby irrevocably authorized to execute (if necessary) and file or cause to be filed, with or if permitted by applicable Law without the signature of any Borrower appearing thereon, all UCC or PPSA financing statements reflecting any Borrower as "debtor" and the Administrative Agent as "secured party", and continuations thereof and amendments thereto, as the Administrative Agent reasonably deems necessary or advisable to give effect to the transactions contemplated hereby and by the other Loan Documents.

4.04 Cash Management.

(a) Controlled Deposit Accounts. On or prior to the Closing Date but subject to the Post-Closing Agreement, enter into a Control Agreement with respect to each Deposit Account listed on Schedule 6.19, other than Excluded Deposit Accounts, which shall include all lockboxes and related lockbox accounts used for the collection of Accounts. Each Loan Party agrees that it shall take all commercially reasonable steps necessary to ensure that all payments in respect of Accounts or other Collateral be paid to a Controlled Deposit Account in its name, including ensuring that all invoices rendered and other requests made by any Loan Party for payment in respect of Accounts

contain a written statement directing payment to be made to a Controlled Deposit Account in its name. The Borrower Agent shall request the Controlled Account Banks to deliver bank statements and/or other reports to the Administrative Agent not less often than monthly, setting forth all amounts deposited in each Controlled Deposit Account to ensure the proper transfer of funds as set forth above. All remittances received by any Loan Party on account of Accounts, together with the proceeds of any other Collateral, shall be held as security in trust for the benefit of the Administrative Agent and the benefit of Lenders, by such Loan Party and, subject to the Post-Closing Agreement, such Loan Party shall immediately deposit same in kind in a Controlled Deposit Account. The Administrative Agent retains the right at all times during the continuance of a Default or an Event of Default, subject to the Intercreditor Agreement, to notify Account Debtors that a Loan Party's Accounts have been assigned to the Administrative Agent and to collect such Loan Party's Accounts directly in its own name, or in the name of the Administrative Agent's agent, and to charge collection costs and expenses, including reasonable attorneys' fees, to the Loan Account.

(b) Concentration Account. Each Control Agreement with respect to a Controlled Deposit Account shall require that, during a Dominion Trigger Period, the Controlled Account Bank transfer all cash receipts and other collections by ACH or wire transfer no less frequently than daily, (x) so long as the "Facility Termination Date" (as defined in the Revolving Credit Agreement) has not occurred, to the "Concentration Account" (as defined in the Revolving Credit Agreement) (the "Revolving Collection Account") and (y) thereafter, to such other accounts as directed by the Administrative Agent in its sole discretion (the "Term Loan Collection Accounts") and together with the Revolving Collection Account, the "Collection Accounts") (whether or not there are any outstanding Revolving Obligations or Obligations). The Revolving Collection Account shall at all times be under the sole dominion and control of the Revolving Agent. The Term Loan Collection Accounts shall at all times be under the sole dominion and control of the Administrative Agent or of the Administrative Agent's financing source. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Collection Accounts, (ii) the funds on deposit in the Collections Accounts shall at all times be collateral security for all of the Obligations and the Revolving Obligations and (iii) the funds on deposit in the Collection Accounts shall be applied as provided in Section 4.04(c) below or the Revolving Credit Agreement, as applicable. In the event that, notwithstanding the provisions of this Section 4.04, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections described above, such proceeds and collections shall be held in trust by such Loan Party for the Administrative Agent or Revolving Agent, as applicable, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, subject to the Post-Closing Agreement, be deposited into a Controlled Deposit Account, or during a Dominion Trigger Period, a Collection Account, or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent or the Revolving Agent, as applicable.

(c) Application of Funds in the Concentration Account. The Loan Parties hereby authorize the Administrative Agent, without prior notice to the Loan Parties, to charge the Term Loan Collection Accounts for all payment obligations payable under any Loan Document as and when the same become due and payable. At the Borrower's option, not more than once per week and upon not less than one (1) Business Day's prior written notice to the Administrative Agent, the Borrower Agent may request from the Term Loan Collection Accounts a distribution of cash from the Term Loan Collection Accounts. The Administrative Agent shall transfer such cash to a Deposit Account specified by the Borrower Agent so long as, (x) after giving effect to such distribution, the Term Loan Exposure does not exceed the Borrowing Base and (y) no Default or Event of Default has occurred and is continuing or would result therefrom.

(d) Controlled Securities Accounts. On or prior to the Closing Date, enter into a Control Agreement with respect to each Securities Account and Commodity Account listed on part (b) of Schedule 6.19. The Borrower Agent shall request the applicable broker, financial institution or other financial intermediary to deliver account statements and/or other reports to the Administrative Agent not less often than monthly, setting forth all assets, including securities entitlements, financial assets or other amounts, held in each Securities Account or Commodity Account.

4.05 Information Regarding Collateral. Each Borrower represents, warrants and covenants that Schedule 4.05 sets forth as of the Closing Date, (a) the exact legal name, jurisdiction of formation, organizational identification number, chief executive office and any trade name or other trade style of each Loan Party and each of its Subsidiaries, (b) each Person that has effected any merger or consolidation with a Loan Party or sold, contributed or transferred to a Loan Party any property constituting Collateral at any time since, in each case, July 1, 2018 (excluding Persons making sales in the ordinary course of their businesses to a Loan Party of property constituting Inventory in the hands of such seller), (c) any prior legal name, jurisdiction of formation, organizational identification number, trade name or other trade style or location of the chief executive office of each Loan Party at any time since July 1, 2018, and (d) each location within the United States in which material goods constituting Collateral are located as of the Closing Date (together with the name of each owner of the property located at such address if not the applicable Loan Party, a summary description of the

relationship between the applicable Loan Party and such Person and with respect to Inventory or other property (other than, to the extent that they are not Borrowing Base Assets, floor samples and related Inventory with a Cost at such location of less than \$40,000, and office Equipment such as desks, electronics, and other similar business personal property) the maximum approximate book or market value of such Collateral held or to be held at such location). The Company shall not change, and shall not permit any other Loan Party to change, its name, jurisdiction of formation (whether by reincorporation, merger or otherwise), the location of its chief executive office or any location specified in clause (d) of the immediately preceding sentence (other than locations that solely contain floor samples and office equipment such as desks, electronics and other similar business personal property), or use or permit any other Loan Party to use, any additional trade name or other trade style, except upon giving not less than thirty (30) days' prior written notice to the Administrative Agent and taking or causing to be taken all such action at Borrowers' or such other Loan Parties' expense as may be reasonably requested by the Administrative Agent to perfect or maintain the perfection and priority of the Lien of the Administrative Agent in the Collateral.

ARTICLE V

CONDITIONS PRECEDENT TO TERM LOANS

5.01 Conditions Precedent. The obligation of each Term Loan Lender to make Term Loans hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following items (except those items that are expressly permitted to be delivered after the Closing Date pursuant to the Post-Closing Agreement), each properly executed by a Responsible Officer of the applicable Loan Party, each dated as of the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and its legal counsel:

(i) executed counterparts of this Agreement and each of the Loan Documents;

(ii) Notes executed by the Borrowers in favor of each Term Loan Lender requesting a Note;

(iii) a Secretary's certificate for each Loan Party certifying as to (A) true and complete copies of all Organization Documents of such Loan Party attached thereto, (B) resolutions of the Board of Directors or other organizational action authorizing execution, delivery and performance of all Loan Documents to which such Loan Party is a party, and (C) incumbency of officers (including specimen signatures) evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) certification from any applicable Governmental Authority as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization and in any other jurisdiction in which the failure to be so qualified could reasonably be expected to have a Material Adverse Effect, including certificates of good standing and qualification to engage in business in each applicable jurisdiction;

(v) a favorable opinion of Finn, Dixon & Herling LLP, counsel to the Loan Parties, each addressed to the Administrative Agent and each Term Loan Lender and their successors and assigns, as to the matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(vi) certificates of Responsible Officers of the Borrower Agent or the applicable Loan Parties either (A) identifying all consents, licenses and approvals required in connection with the execution, delivery and performance by each Borrower and the validity against each such Loan Party of the Loan Documents to which it is a party, and stating that such consents, licenses and approvals shall be in full force and effect, and attaching true and correct copies thereof or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by a Responsible Officer of the Borrower Agent certifying (A) that the conditions specified in Sections 5.01(j) and 5.01(k) have been satisfied and (B) as to the matters described in Section 5.01(d);

(viii) (A) audited financial statements of Holdings and its Subsidiaries for each of the three fiscal years immediately preceding the Closing Date, (B) unaudited interim financial statements for Holdings and its Subsidiaries as of May 31, 2023, (C) preliminary unaudited interim financial statements for Holdings and its Subsidiaries as of June 30, 2023, and (D) financial projections (including but not limited to financial forecast models and liquidity forecasts) of Holdings and its Subsidiaries on a monthly basis for the remainder of 2023 and 2024 and on an annual basis for 2025;

(ix) a certificate signed by the Chief Financial Officer or the Chief Accounting Officer of the Borrower Agent certifying that, after giving effect to the entering into of the Loan Documents and the consummation of all of the Transactions, (A) each Borrower is Solvent and (B) the Loan Parties, taken as a whole, are Solvent;

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

(xi) an initial Borrowing Base Certificate;

(xii) written notice of borrowing of the Term Loans;

(xiii) delivery of Uniform Commercial Code financing statements, suitable in form and substance for filing in all places required by applicable law to perfect the Liens of the Administrative Agent under the Security Instruments as a first priority Lien as to items of Collateral (subject to the Intercreditor Agreement) in which a security interest may be perfected by the filing of financing statements, and such other documents and/or evidence of other actions as may be reasonably necessary under applicable law to perfect the Liens of the Administrative Agent under such Security Instruments as a first priority Lien in and to such other Collateral (subject to the Intercreditor Agreement) as the Administrative Agent may require;

(xiv) Uniform Commercial Code search results showing only those Liens as are acceptable to the Administrative Agent and Lenders;

(xv) evidence of the payment in full and cancellation of the Existing Agreement, including terminations of Uniform Commercial Code financing statements filed in connection with the Existing Agreement and other evidence of lien releases and other related matters on terms acceptable to the Administrative Agent;

(xvi) evidence satisfactory to the Administrative Agent of the consummation (in compliance with all applicable laws and regulations, with the receipt of all material governmental, shareholder and third party consents and approvals relating thereto) of the Transactions;

(xvii) copies of the Revolving Loan Documents, all certified as true and correct by the Borrower Agent;

(xviii) executed counterparts of the Post-Closing Agreement;

(xix) such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Required Lenders may reasonably require.

(b) The Administrative Agent shall have completed satisfactory background checks of the Loan Parties' management. In addition, at least five days prior to the Closing Date, (i) any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Borrower and (ii) so long as requested by the Administrative Agent or any Term Loan Lender at least ten days prior to the Closing Date, Borrowers shall have provided to Administrative Agent and each requesting Lender the documentation and other information so requested in connection with applicable "know your customer" and Anti-Money Laundering Laws or Anti-Corruption Laws, including the PATRIOT Act.

(c) Administrative Agent and its counsel shall have completed all legal, tax and regulatory due diligence, including without limitation review of all documentation required by bank regulatory authorities under applicable Anti-Corruption Laws and Anti-Money Laundering Laws, the results of which shall be satisfactory to Administrative Agent in its sole discretion.

(d) Any fees required to be paid on or before the Closing Date shall have been, or concurrently with the satisfaction of the requirements in this Section 5.01, will be, paid.

(e) Unless waived by the Administrative Agent, the Borrowers shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such reasonable fees, charges and disbursements as shall constitute its reasonable estimate of such reasonable fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).

(f) The Administrative Agent shall be satisfied that after giving effect to (i) the Term Loans, (ii) consummation of the Transactions and payment of all fees and expenses in connection therewith and (iii) any payables stretched beyond their customary payment practices, Liquidity shall be not less than \$75,000,000.

(g) The Administrative Agent shall have received a Field Exam and appraisals of the Loan Parties' Inventory, Intellectual Property and Equipment, each in form and substance reasonably satisfactory to the Administrative Agent.

(h) The Administrative Agent's and each Term Loan Lender's respective investment committees shall have approved this Agreement and the transactions contemplated hereby.

(i) The capital structure of the Loan Parties and their Subsidiaries shall be satisfactory to Administrative Agent.

(j) The representations and warranties of the Loan Parties contained in Article VI or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or in the case of any representation or warranty subject to a materiality qualifier, true and correct in all respects) on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or in the case of any representation or warranty subject to a materiality qualifier, true and correct in all respects) as of such earlier date.

(k) No Default shall have occurred and be continuing, or would result from the extension of the Term Loans or from the application of the proceeds thereof.

Without limiting the generality of the provisions of Section 10.04, for purposes of determining compliance with the conditions specified in this Section 5.01, each Term Loan Lender that has signed 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 a Lender unless the Administrative Agent shall have received notice from such Term Loan Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

To induce the Secured Parties to enter into this Agreement and to make Term Loans hereunder, each Loan Party represents and warrants to the Administrative Agent and the Term Loan Lenders that:

6.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary (a) is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as is now being conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and to consummate the Transactions to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or

the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i), or (c), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Loan Party is (a) an Affected Financial Institution or (b) a Covered Entity (as defined in [Section 11.21\(b\)](#)).

6.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, and the consummation of the Transactions, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of the Organization Documents of any such Person; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (i) any material Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

6.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Term Loan Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for those which have been duly obtained, taken, given or made and are in full force and effect and the filing and recording of financing statements and other documents necessary in order to perfect the Liens created by the Security Instruments.

6.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except (a) as rights to indemnification hereunder may be limited by applicable Law and (b) as the enforcement hereof may be limited by any applicable Debtor Relief Laws or by general equitable principles.

6.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material Indebtedness and other liabilities, direct or contingent, of Holdings and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Consolidated balance sheet of Holdings and its Subsidiaries dated as of May 31, 2023, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for the month then ended (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of Holdings and its Subsidiaries 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.

(c) Since the date of the Audited Financial Statements there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) Each Borrower is Solvent and the Loan Parties, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be 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 any Loan Party.

6.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Loan Party after due investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues, that (a) purport to affect or pertain to this Agreement

or any other Loan Document (including the grant and perfection of any Lien under any Security Instrument) or any of the Transactions or (b) except as specifically disclosed in Schedule 6.06, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect. There has been no adverse change in the status, or financial effect on any Loan Party or any Subsidiary thereof, of the matters described on Schedule 6.06.

6.07 No Default. No Loan Party nor any Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

6.08 Ownership of Property; Liens.

(a) Each Loan Party and each Subsidiary has good title to, or valid leasehold interests in, all its real and personal property material to its business, if any (including the Mortgaged Properties), (i) free and clear of all Liens except for Permitted Liens and (ii) except for minor defects in title that do not materially interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes.

(b) Schedule 6.08 sets forth the address (including street address, county and state) of all Real Property that is owned or subject to a ground lease by the Loan Parties as of the Closing Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Liens. Each ground lease of the Loan Parties is in full force and effect and the Loan Parties are not in default of any material terms thereof.

6.09 Environmental Compliance.

(a) Except as disclosed in Schedule 6.09, no Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law with respect to the Loan Party or any Subsidiary's operations, (ii) has become subject to a pending claim with respect to any Environmental Liability or (iii) has received written notice of any claim with respect to any Environmental Liability except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, (i) none of the properties currently owned or operated by any Loan Party or any Subsidiary thereof is listed or, to the knowledge of the Loan Parties, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and, to the knowledge of the Loan Parties, never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof; (iii) to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Loan Party or Subsidiary in violation of Environmental Laws or, to the knowledge of the Loan Parties, by any other Person in violation of Environmental Laws on any property currently owned or operated by any Loan Party or any Subsidiary thereof.

(c) Except as otherwise set forth on Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, no Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored by any Loan Party or any Subsidiary at, or transported to or from by or on behalf of any Loan Party or any Subsidiary, any property currently owned or operated by any Loan Party or any Subsidiary thereof have, to the knowledge of the Loan Parties, been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

(d) Each Loan Party conducts in the Ordinary Course of Business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations

and properties, and as a result thereof each Loan Party has reasonably concluded that, except as set forth on Schedule 6.09, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 6.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. Each insurance policy listed on Schedule 6.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

6.11 Taxes. Each Loan Party and its Subsidiaries have filed all federal, state and other tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being Properly Contested and except where the failure to file such returns or reports could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against Holdings or any Subsidiary that would, if made, have a Material Adverse Effect. Neither Holdings nor any Subsidiary thereof is party to any tax sharing agreement.

6.12 ERISA Compliance.

(a) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other federal or state Laws, except as could not reasonably be expected to have a Material Adverse Effect. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service (or, with respect to a prototype plan, can rely on an opinion or advisory letter from the Internal Revenue Service to the prototype plan sponsor) to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Loan Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could 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 or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) No Loan Party nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 6.12 hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

(e) As of the Closing Date that the Borrower is not and will not be 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 the Term Loans or the Term Loan Commitments;

6.13 Subsidiaries and Equity Interests. No Loan Party (a) has any Subsidiaries other than those specifically disclosed in part (a) of Schedule 4.05 or created or acquired after the Closing Date in compliance with Section 7.12, or (b) owns any Equity Interests in any other Person other than those specifically disclosed on Schedule 6.13, except, in each case, Subsidiaries acquired or created and equity investments made on or after the Closing Date in compliance with this Agreement and the other Loan Documents. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments and Permitted Liens arising by operation of Law. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments and Permitted Liens arising by operation of Law.

6.14 Margin Regulations; Investment Company Act. No Loan Party is engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), or extending credit for the purpose of purchasing or carrying margin stock. None of the Loan Parties, any Person Controlling any Loan Party, nor any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

6.15 Disclosure. Each Loan Party has disclosed or caused the Borrower Agent to disclose to the Administrative Agent and the Term Loan Lenders all material agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate (including the Borrowing Base Certificates) or other information furnished (whether in writing or orally) by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Term Loan Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), and taken as a whole, 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 they were made, not misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.16 Compliance with Laws. Each Loan Party and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.17 Intellectual Property; Licenses, Etc. Each Loan Party and its Subsidiaries own, or possess the right to use, all of the Intellectual Property (including IP Rights) that are reasonably necessary for the operation of their respective businesses, without known conflict with the IP Rights of any other Person, except to the extent any failure so to own or possess the right to use could not reasonably be expected to have a Material Adverse Effect. To the knowledge of each Loan Party, the operation by each Loan Party and its Subsidiaries of their respective businesses does not infringe upon any IP Rights held by any other Person.

6.18 Labor Matters. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or as set forth on Schedule 6.18, there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. Except as would not reasonably be expected to result in a Material Adverse Effect, the hours worked by and payments made to employees of the Loan Parties comply with the FLSA and any other applicable federal, state, local or foreign Law dealing with such matters. No Loan Party or any of its Subsidiaries has incurred any material liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due

from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 6.18 no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries, except as would not reasonably be expected to result in a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

6.19 Deposit Accounts and Securities Accounts.

(a) Part (a) of Schedule 6.19 sets forth a list of all Deposit Accounts (including Excluded Deposit Accounts) maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each Deposit Account (i) the name and address of the depository; (ii) the name and account number of such Deposit Account; (iii) the type or use of such Deposit Account and (iv) the average balance of such Deposit Account over the prior twelve month period.

(b) Part (b) of Schedule 6.19 sets forth a list of all Securities Accounts and Commodity Accounts maintained by the Loan Parties as of the Closing Date, which Schedule includes with respect to each Securities Account and Commodity Account (i) the name and address of the securities intermediary or institution holding such account; (ii) the name and account number of such account; (iii) a contact person at such securities intermediary or institution and (iv) the average value of assets held in such account over the prior twelve month period.

(c) Part (c) of Schedule 6.19 sets forth a list of all of the Credit Card Agreements and all other agreements, documents and instruments existing on the Closing Date between or among any Loan Party, the Credit Card Issuers, the Credit Card Processors and any of their Affiliates or Related Parties with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party. The Credit Card Agreements constitute all of such agreements necessary for each Loan Party to operate its business as presently conducted with respect to credit cards and debit cards. Borrowers have delivered, or caused to be delivered to the Administrative Agent true, correct and complete copies of all of the Credit Card Agreements.

6.20 Accounts. The Administrative Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by the Loan Parties with respect thereto. Each Borrower warrants, with respect to each Account at the time it is shown as an Eligible Account in a Borrowing Base Certificate, that:

(a) it is genuine and in all respects what it purports to be, and is not evidenced by a judgment;

(b) it arises out of a completed, *bona fide* sale and delivery of goods in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;

(c) it is for a sum certain, maturing as stated in the invoice covering such sale, a copy of which has been furnished or is available to the Administrative Agent on request;

(d) it is not subject to any offset, Lien (other than the Administrative Agent's Lien, the Revolving Agent's Lien and Permitted Liens arising by operation of Law), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to the Administrative Agent; and it is absolutely owing by the Account Debtor, without contingency in any respect;

(e) no purchase order, agreement, document or applicable Laws restricts assignment of the Account to the Administrative Agent (regardless of whether, under the UCC, the restriction is ineffective) other than customary non-assignment clauses contained in retailer, purchase or supplier agreements, and the applicable Borrower is the sole payee or remittance party shown on the invoice;

(f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized with respect to the 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; and

(g) to each Borrower's knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectability of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to any proceeding under any Debtor Relief Laws, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

6.21 Sanction; Anti-Money Laundering Laws and Anti-Corruption Laws.

(a) None of the Loan Parties nor any of their Controlled Persons nor, to the knowledge of Borrower, any agent, affiliate or representative of any Loan Party or any of their Subsidiaries, is, or is controlled by a Person that is, a Sanctioned Person or currently the subject or target of any Sanctions.

(b) The Loan Parties and each of their Subsidiaries and, to the knowledge of Borrower, each of the Loan Parties' and their Subsidiaries' respective agents, affiliates and representatives, is in compliance with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(c) The Loan Parties and their Subsidiaries have instituted and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties, their Subsidiaries, and their Controlled Persons with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(d) As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

6.22 Brokers. Except as otherwise disclosed in writing to Administrative Agent, no broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

6.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any modification or change in the business relationship of any Loan Party with any customers or suppliers which are, individually or in the aggregate, material to its operations, to the extent that such cancellation, modification or change would reasonably be expected to result in a Material Adverse Effect.

6.24 Material Contracts. Schedule 6.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Administrative Agent on or before the date hereof.

6.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

6.26 Senior Indebtedness. All Obligations including those to pay principal of and interest (including post-petition interest, whether or not allowed as a claim under Debtor Relief Laws) on the Loans and other Obligations, and fees and expenses in connection therewith, are entitled to the benefits of the Subordination Provisions applicable to Subordinated Debt. Each Loan Party acknowledges that the Administrative Agent and each Term Loan Lender is entering into this Agreement and each Term Loan Lender is extending its Commitments in reliance upon the Subordination Provisions.

ARTICLE VII AFFIRMATIVE COVENANTS

So long as any Obligation (other than contingent obligations for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, each Loan Party shall, and shall cause each Subsidiary to, or with respect to Sections 7.01, 7.02 and 7.03, the Borrower Agent shall:

7.01 Financial Statements. Deliver to the Administrative Agent and each Term Loan Lender:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of Holdings or, if earlier, 15 days after the date required to be filed with the SEC, a Consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be audited and accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Administrative Agent (the "Auditor"), which report and opinion shall be prepared in accordance with audit standards of the Public Company Accounting Oversight Board and applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception (except any "going concern" qualification or exception as a result of the maturity of the Revolving Facility and the Term Loan Facility within the next 12 months) or any qualification or exception as to the scope of such audit and shall include a certificate of the Auditor stating that in making the examination necessary with respect to such audit it has not become aware of any Default in respect of any term, covenant, condition of Section 8.12 or other provision in so far as they relate to accounting matters or, if any such Default shall exist, stating the nature and status of such event;

(b) quarterly, for the first three fiscal quarters of each fiscal year, as soon as available, but in any event within 50 days after the end of each such fiscal quarter, unaudited Consolidated and consolidating balance sheets of Holdings as of the end of such quarter and the related statements of income and cash flow for such quarter and for the portion of the fiscal year then elapsed, on a Consolidated basis for Holdings and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding fiscal year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial condition, results of operations, shareholders equity and cash flows for such quarter and period, subject to normal year-end adjustments and the absence of footnotes;

(c) monthly, as soon as available, but in any event within 30 days after the end of each fiscal month, unaudited Consolidated and consolidating balance sheets of Holdings as of the end of such month and the related statements of income and cash flow for such month and for the portion of the fiscal year then elapsed, on a Consolidated basis for Holdings and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding fiscal year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial condition, results of operations and cash flows for such month and period, subject to normal year-end adjustments and the absence of footnotes; and

(d) as soon as available but not later than 60 days after the end of each fiscal year, annual financial projections of Holdings and its Subsidiaries on a Consolidated basis, in form reasonably satisfactory to the Administrative Agent and the Required Lenders, consisting of (i) Consolidated balance sheets and statements of income or operations and cash flows and (ii) monthly Availability for Borrowers for such fiscal year.

As to any information contained in materials furnished pursuant to Section 7.02(d), the Loan Parties shall not be separately required to furnish such information under clause (a), (b) or (c) above, but the foregoing shall not be in derogation of the obligation of the Loan Parties to furnish the information and materials described in subsections (a), (b) and (c) above at the times specified therein.

7.02 Borrowing Base Certificate; Other Information. Deliver to the Administrative Agent and each Term Loan Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) on or before the 20th of each month from and after the date hereof, Borrower Agent shall deliver to Administrative Agent, in form acceptable to the Administrative Agent, a Borrowing Base Certificate as of the last day of the immediately preceding month, with such supporting materials as the Administrative Agent shall reasonably request (including weekly reporting of rolling forward accounts receivable data by reporting weekly sales, cash collections and credits and monthly reporting of gross inventory, inventory ineligible and accounts receivable ineligible). If a Reporting Trigger Period exists, Borrower Agent shall execute and deliver to Administrative Agent Borrowing Base Certificates weekly on or before Wednesday of each week and as of the last day of the immediately preceding week together with such supporting materials as the Administrative Agent shall reasonably request; provided that, to the extent approved by the Administrative Agent in its reasonable discretion, the Borrower will not be required to update certain items in the weekly Borrowing Base Certificate to the extent that such items are not available on a weekly basis in the ordinary course of business using commercially reasonable efforts (it being agreed that the foregoing shall not prevent the Administrative Agent from implementing Availability Reserves to account for such items). All calculations of Availability in any Borrowing Base Certificate shall initially be made by Borrowers and certified by a Responsible Officer, provided that the Administrative Agent may from time to time review and adjust any such calculation in its Credit Judgement (a) to reflect its reasonable estimate of declines in value of any Collateral, including due to collections received in the Concentration Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral, including delay of payment of accounts payable beyond past practice; and (c) to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Availability Reserve;

(b) on or before the 20th day of each calendar month from and after the date hereof, Borrower Agent shall deliver to the Administrative Agent, in the form reasonably acceptable to the Administrative Agent, (i) reconciliations of all Borrowers' Accounts as shown on the month-end Borrowing Base Certificate for the immediately preceding month to Borrowers' accounts receivable agings, to Borrowers' general ledger and to Borrowers' most recent financial statements, (ii) accounts payable agings, (iii) accounts receivable agings and invoice level agings, (iv) reconciliations of Borrowers' Inventory as shown on Borrowers' perpetual inventory, to Borrowers' general ledger and to Borrowers' financial statements and (vi) Inventory status reports, all with supporting materials as the Administrative Agent shall reasonably request.

(c) a Compliance Certificate executed by the chief financial officer of Borrower Agent which certifies compliance with Section 8.12 and provides a reasonably detailed calculation of the Consolidated Fixed Charge Coverage Ratio delivered (i) concurrently with delivery of financial statements under Sections 7.01(a), 7.01(b) and 7.01(c) above, whether or not a Fixed Charge Trigger Period then exists, and (ii) as requested by the Administrative Agent while a Default or Event of Default exists;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement sent to the stockholders of Holdings, and copies of all annual, regular, periodic and special reports and registration statements which Holdings may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) at the Administrative Agent's request (but not more frequently than monthly unless a Default or Event of Default has occurred and is continuing), a listing of each Borrower's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form and scope satisfactory to the Administrative Agent;

(f) promptly following any request therefor, provide information and documentation reasonably requested by Administrative Agent for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable Anti-Money Laundering Laws, Anti-Corruption Laws, or Sanctions; and

(g) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Term Loan Lender may from time to time reasonably request or as may be provided to the Revolving Agent from time to time, all in form and scope reasonably acceptable to the Administrative Agent.

Documents required to be delivered pursuant to Section 7.01(a), 7.01(b) or 7.01(c) or Section 7.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower Agent posts such documents, or provides a link thereto on the Borrower Agent's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrower Agent's behalf on an Internet or intranet website, if any, to which each Term Loan Lender and the Administrative Agent have

access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (x) the Borrower Agent shall deliver paper copies of such documents to the Administrative Agent or any Term Loan Lender that requests the Borrower Agent to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Term Loan Lender and (y) the Borrower Agent shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Term Loan Lender of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Term Loan Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

7.03 Notices. Promptly, and in any event within one (1) Business Days after any Responsible Officer obtains knowledge of such occurrence or the materiality thereof, as applicable, notify the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including as a result of (i) breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws; or (iv) any violation or asserted violation of any applicable Law;

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(c) the occurrence of any ERISA Event;

(d) the occurrence of a Change of Control;

(e) the creation (by Division or otherwise) or acquisition of any Subsidiary;

(f) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary;

(g) any change in any Loan Party's senior executive officers;

(h) the discharge by any Loan Party of its present Auditors or any withdrawal or resignation by such Auditors;

(i) any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(j) the filing of any Lien for unpaid Taxes against any Loan Party;

(k) any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;

(l) any notice received by Holdings or any of its Subsidiaries under the Revolving Loan Documents or any notices of termination or event of default or any other material notice under the Master Retailer Agreement with Mattress Firm, Inc.;

(m) Collateral in an aggregate face amount of \$1,000,000 or more, at any one time, ceasing to be Eligible Accounts, Eligible Credit Card Receivables, Eligible Inventory, Eligible Intellectual Property or Eligible Machinery and Equipment;

(n) any material notice received with respect to any pledged Equity Interest;

(o) (i) any failure by any Loan Party to pay rent at any of such Loan Party's locations if such failure continues for more than fifteen (15) days following the day on which such rent first came due or (ii) any pending termination or expiration in accordance with its

terms of a lease, bailment, storage or similar agreement for any location where a material amount of Collateral is located, at least 60 days prior to such termination or expiration, if no extension or renewal or replacement thereof has been entered into at such time; and

(p) the occurrence of any default under the Tax Receivable Agreement.

Each notice pursuant to this Section 7.03 shall be accompanied by a statement of a Responsible Officer of the Borrower Agent setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

7.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being Properly Contested; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, except to the extent that any such Lien would otherwise be permitted by Section 8.02; and (c) all Indebtedness having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

7.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 8.04 or 8.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered Intellectual Property, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

7.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its properties and Equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

7.07 Maintenance of Insurance; Condemnation Proceeds.

(a) Maintain with (i) companies having an A.M. Best Rating of at least “A” or (ii) financially sound and reputable insurance companies reasonably acceptable to the Administrative Agent and not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Administrative Agent;

(b) Maintain flood insurance with respect to any Mortgaged Property located in any area identified by FEMA (or any successor agency) as a Special Flood Zone with such providers, on such terms and in such amounts as required pursuant to the Flood Disaster Protection Act and the National Flood Insurance Act of 1968, and all applicable rules and regulations promulgated thereunder, or as otherwise required by the Term Loan Lenders.

(c) Cause all casualty policies, including fire and extended coverage policies, maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgagee clause (regarding improvements to Real Property) and lenders’ loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Administrative Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Administrative Agent, (ii) a provision to the effect that none of the Loan Parties, Secured Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Secured Parties.

(d) Cause commercial general liability policies to be endorsed to name the Administrative Agent as an additional insured; and cause business interruption policies to name the Administrative Agent as a loss payee and to be endorsed or amended to include (i) a provision to the effect that none of the Loan Parties, the Administrative Agent or any other party shall be a co-insurer and (ii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Secured Parties.

(e) Cause each such policy referred to in this Section 7.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Administrative Agent.

(f) Deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy or insurance certificate (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium therefor.

(g) Permit any representatives that are designated by the Administrative Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby. The Loan Parties shall pay the reasonable fees and expenses of any representatives retained by the Administrative Agent to conduct any such inspection.

(h) None of the Secured Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 7.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Secured Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Secured Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Secured Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Secured Party under this Section 7.07 shall in no event be deemed a representation, warranty or advice by such Secured Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

7.08 Compliance with Laws; Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(a) Comply in all material respects with the requirements of all Laws (including without limitation all applicable Environmental Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being Properly Contested; or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect;

(b) Notwithstanding the general applicability of Section 7.08(a) above, comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to Borrower and shall cause each other Loan Party and each of its and their respective Subsidiaries to comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to such Persons.

(c) Maintain in effect and enforce policies and procedures as in effect on the date hereof to ensure compliance by each Loan Party and all Controlled Persons with applicable Anti-Corruption Laws, Anti Money-Laundering Laws and Sanctions.

7.09 Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of each Loan Party or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over any Loan Party or such Subsidiary, as the case may be.

7.10 Inspection Rights and Appraisals; Meetings with the Administrative Agent.

(a) Permit the Administrative Agent or its designees or representatives from time to time, subject to reasonable notice and normal business hours (except, in each case, when a Default or Event of Default exists), to conduct Field Exams and/or appraisals of Inventory and to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers and Auditors; provided that representatives of the Borrower Agent shall be given the opportunity to participate in any discussions with the Auditors. The Administrative Agent shall not have any duty to any Loan Party to share any results of any Field Exam with any Loan Party. Appraisals shall be shared with the Borrower Agent upon request. The Loan Parties acknowledge that all Field Exams, appraisals and reports are prepared by or for the Administrative Agent and Term Loan Lenders for their purposes, and Loan Parties shall not be entitled to rely upon them. Notwithstanding the foregoing, the Borrower shall deliver to the Administrative Agent each Field Exam and appraisal conducted by the Revolving Agent under or in connection with the Revolving Credit Agreement, and solely to the extent the Administrative Agent does not receive a satisfactory Field Exam and inventory appraisal conducted by or on behalf of the Revolving Agent under the Revolving Credit Agreement, the Borrower shall reimburse the Administrative Agent for all reasonable and documented out-of-pocket charges, costs and expenses of the Administrative Agent in connection with (i) up to one appraisal of Inventory and one Field Exam during any twelve (12) month period during which no Field Exam Trigger Event has occurred and (ii) up to two appraisals and two Field Exams in any twelve (12) month period during which a Field Exam Trigger Event has occurred; provided, however, that if a Field Exam or appraisal is initiated during a Default or Event of Default, all charges, costs and expenses therefor shall be reimbursed by the Loan Parties without regard to such limits.

(b) Permit the Administrative Agent or its designees or representatives from time to time, subject to reasonable notice and normal business hours (except, in each case, when a Default or Event of Default exists), to conduct appraisals of Equipment and Intellectual Property constituting Collateral. Such appraisals shall be shared with the Borrower Agent upon request. The Loan Parties acknowledge that all appraisals and reports are prepared by or for the Administrative Agent and Term Loan Lenders for their purposes, and Loan Parties shall not be entitled to rely upon them.

(c) Reimburse the Administrative Agent for all reasonable and documented out-of-pocket charges, costs and expenses of the Administrative Agent in connection with (x) up to two appraisals of Equipment and (y) up to two appraisals of Intellectual Property (in each case, one of which may, in the Credit Judgment of the Administrative Agent, be conducted on a “desk-top” basis), in each case, in any twelve (12) month period; provided, however, that if an appraisal is initiated during a Default or Event of Default, all charges, costs and expenses therefor shall be reimbursed by the Loan Parties without regard to such limits; provided, further, however, that the Administrative Agent may cause additional Intellectual Property and/or Equipment appraisals to be undertaken as in its discretion deems necessary or appropriate, at its own expense.

(d) Without limiting the foregoing, participate and will cause their key management personnel to participate in meetings with the Administrative Agent and Lenders periodically during each year, which meetings shall be held at such times and such places as may be reasonably requested by the Administrative Agent.

7.11 Use of Proceeds. Use the proceeds of the Term Loans (i) to refinance certain Indebtedness under the Existing Agreement, (ii) to pay fees and expenses in connection with the Transactions, and (iii) for working capital, capital expenditures, and other general corporate purposes not in contravention of any Law or of any Loan Document.

7.12 New Subsidiaries. As soon as practicable but in any event within 30 days following the acquisition or creation (by Division or otherwise) of any Domestic Subsidiary (other than an Excluded Subsidiary), or the time any existing Excluded Subsidiary ceases to be an Excluded Subsidiary, cause to be delivered to the Administrative Agent each of the following, as applicable:

(a) a joinder agreement reasonably acceptable to the Administrative Agent duly executed by such Domestic Subsidiary sufficient to cause such Subsidiary to become a Guarantor (or, with the consent of the Administrative Agent if such Subsidiary is to own any assets of the type included in the Borrowing Base, a Borrower hereunder), together with executed counterparts of each other Loan Document reasonably requested by the Administrative Agent, including all Security Instruments and other documents reasonably requested to establish and preserve the Lien of the Administrative Agent in all Collateral of such Domestic Subsidiary;

(b) (i) Uniform Commercial Code financing statements naming such Person as “Debtor” and naming the Administrative Agent for the benefit of the Secured Parties as “Secured Party,” in form, substance and number sufficient in the reasonable opinion of the Administrative Agent and its special counsel to be filed in all Uniform Commercial Code filing offices and in all jurisdictions in which filing is necessary to perfect in favor of the Administrative Agent for the benefit of the Secured Parties the Lien on the Collateral conferred under such Security Instrument to the extent such Lien may be perfected by Uniform Commercial Code filing, and (ii) pledge agreements, control agreements, Documents and original collateral (including pledged Equity Interests (other than Excluded Equity Interests), Securities and Instruments) and such other documents and agreements as may be reasonably required by the Administrative Agent, all as necessary to establish and maintain a valid, perfected security interest in all Collateral in which such Domestic Subsidiary has an interest consistent with the terms of the Loan Documents;

(c) upon the request of the Administrative Agent, an opinion of counsel to each such Domestic Subsidiary and addressed to the Administrative Agent and the Term Loan Lenders, in form and substance reasonably acceptable to the Administrative Agent, each of which opinions may be in form and substance, including assumptions and qualifications contained therein, substantially similar to those opinions of counsel delivered pursuant to Section 5.01(a);

(d) current copies of the Organization Documents of each such Domestic Subsidiary, together with minutes of duly called and conducted meetings (or duly effected consent actions) of the Board of Directors, partners, or appropriate committees thereof (and, if required by such Organization Documents or applicable law, of the shareholders, members or partners) of such Person authorizing the actions and the execution and delivery of documents described in this Section 7.12, all certified by the applicable Governmental Authority or appropriate officer as the Administrative Agent may elect; and

(e) with respect to any Subsidiary to become a Borrower hereunder, within three (3) Business Days prior to becoming a Borrower (which shall require the consent of the Administrative Agent), all information and documentation reasonably requested by (and results satisfactory to) Administrative Agent and each Term Loan Lender for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws to the extent such information is requested by the Administrative Agent or the Term Loan Lenders reasonably promptly after written notice to the Administrative Agent of the proposed joinder of a Borrower.

7.13 Compliance with ERISA. Do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance in all respects with the applicable provisions of ERISA, the Code and other applicable Laws, except as could not reasonably be expected to result in a Material Adverse Effect; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification, except as could not reasonably be expected to result in a Material Adverse Effect; and (c) make all required contributions to any Plan subject to the Pension Funding Rules. At no time shall the accumulated benefit obligations under any Plan subject to Title IV of ERISA that is not a Multiemployer Plan exceed the Fair Market Value of the assets of such Plan allocable to such benefits by more than the Threshold Amount. The Loan Parties and each of their respective Subsidiaries shall not withdraw, and shall cause each ERISA Affiliate not to withdraw, in whole or in part, from any Multiemployer Plan so as to give rise to withdrawal liability exceeding the Threshold Amount in the aggregate. At no time shall the actuarial present value of unfunded liabilities for post-employment health care benefits, whether or not provided under a Plan, calculated in a manner consistent with Statement No. 106 of the Financial Accounting Standards Board, exceed the Threshold Amount.

7.14 Further Assurances. At the Borrowers’ cost and expense, upon request of the Administrative Agent, duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further information, instruments, documents, certificates, financing and continuation statements, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement, the Security Instruments and the other Loan Document, including, to create, continue or preserve the liens and security interests in Collateral (and the perfection and priority thereof) of the Administrative Agent contemplated hereby and by the other Loan Documents and specifically including all Collateral acquired by the Borrowers after the Closing Date.

7.15 Licenses. (a) Keep in full force and effect each License (i) the expiration or termination of which could reasonably be expected to materially adversely affect the realizable value in the use or sale of a material amount of Inventory or (ii) the expiration or termination of which could reasonably be expected to have a Material Adverse Effect (each a “Material License”); (b) promptly notify the Administrative Agent of (i) any material modification to any such Material License that could reasonably be expected to be materially adverse to any Loan Party or the Administrative Agent or any Term Loan Lender and (ii) entering into any new Material License; (c)

pay all Royalties (other than immaterial Royalties or Royalties being Properly Contested) arising under such Material Licenses when due (subject to any cure or grace period applicable thereto); and (d) notify the Administrative Agent of any default or breach asserted in writing by any Person to have occurred under any such Material License.

7.16 Environmental Laws. Conduct its operations and keep and maintain its Real Property in material compliance with all Environmental Laws, other than any such non-compliance which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; (b) obtain and renew all environmental permits necessary for its operations and properties, other than any environmental permits the failure of which to obtain would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; and (c) implement any and all investigation, remediation, removal and response actions that are required to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under or about any of its Real Property other than any such non-compliance which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

7.17 Leases, Mortgages and Third-Party Agreements.

(a) Upon request, provide Administrative Agent with copies of all existing and future agreements (including any mortgage, deed of trust or similar security document) entered into between a Loan Party and any landlord, warehouseman, manufacturer, processor, shipper, bailee or other Person that owns, or has a mortgage or similar lien on, any premises at which any Collateral with an aggregate value of \$100,000 or greater may be kept or that otherwise may possess any Collateral with an aggregate value of \$100,000 or greater (each a “Material Third-Party Agreement”).

(b) Except as otherwise expressly permitted hereunder, (i) make all payments and otherwise perform all obligations in respect of all leases constituting Material Third Party Agreements and not allow such leases to lapse or be terminated (or any rights to renew such leases to be forfeited or cancelled), (ii) notify the Administrative Agent of any default by the applicable Loan Party or Subsidiary with respect to such leases and (iii) promptly cure any such default by the applicable Loan Party or Subsidiary. If any such default is not so cured, each Loan Party hereby authorizes the Administrative Agent (as its non-fiduciary agent and on its behalf) to, if elected by the Administrative Agent in its sole discretion, make such payments and/or take such other actions as the Administrative Agent may elect in order to cure any such default (whether or not an Event of Default under this Agreement exists at such time). Any payment made pursuant to this Section 7.17(b) shall be deemed a Protective Advance hereunder. Each Loan Party agrees that the Administrative Agent shall have no obligation to exercise any right to cure hereunder, whether or not such right is exercised on any one or more occasions.

7.18 Material Contracts. Perform and observe all the payment terms and other material terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent and, upon reasonable request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do any of the foregoing, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

ARTICLE VIII NEGATIVE COVENANTS

So long as any Obligation (other than contingent obligations for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

8.01 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness or issue any Disqualified Equity Interest, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 8.01;

(c) Guarantees of any Loan Party in respect of Indebtedness otherwise permitted hereunder of any other Loan Party; provided that any Guarantee of Indebtedness permitted hereunder that is subordinated to the Obligations shall be subordinated to the Obligations on substantially the same terms as such guaranteed Indebtedness;

(d) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the Ordinary Course of Business for the purpose of directly mitigating risks reasonably anticipated by such Person associated with liabilities, commitments, investments, assets, cash flows of or property held by, or changes in the value of securities issued by, such Person, and not for purposes of speculation or taking a “market view” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) Indebtedness arising in the Ordinary Course of Business in connection with treasury management and commercial credit card, merchant card and purchase or procurement card services including not prohibited under the Revolving Credit Agreement;

(f) Indebtedness in respect of Capital Leases, Synthetic Lease Obligations and purchase money obligations for Real Property and other fixed or capital assets within the limitations set forth in Section 8.02(i); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding, together with the Swap Termination Value of all Swap Contracts permitted under Section 8.01(d) above, shall not exceed \$5,000,000;

(g) Assumed Indebtedness in an aggregate principal amount not to exceed \$1,000,000 at any time outstanding;

(h) Indebtedness (including earnouts and seller notes) incurred to finance or as part of the consideration for any Permitted Acquisition; provided, that, (i) no Event of Default exists at the time of or would be caused by the incurrence of such Indebtedness and (ii) such Indebtedness (A) is unsecured, (B) bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm’s length market rate (or amount) for similar Indebtedness, (C) does not have a maturity date or require the payment in cash of principal (other than in respect of working capital adjustments) prior to a date later than 91 days following the Maturity Date and (D) is subordinated to the Obligations on terms reasonably acceptable to the Administrative Agent;

(i) unsecured Indebtedness consisting of Investments in any Person that is not a Subsidiary permitted under Section 8.03; provided that any Guarantee of such unsecured Indebtedness shall be subordinated to the Obligations on substantially the same terms, if any, as are applicable to such unsecured Indebtedness;

(j) Indebtedness of Foreign Subsidiaries in an aggregate principal amount at any time outstanding not to exceed \$500,000;

(k) the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(l) Indebtedness in respect of any bankers’ acceptance, bank guarantees, letters of credit, warehouse receipt or similar facilities entered into in the ordinary course of business in respect of workers’ compensation and other casualty claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation and other casualty claims;

(m) Indebtedness incurred or arising in the Ordinary Course of Business and not in connection with the borrowing of money in respect of (i) obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms; (ii) performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar instruments or obligations; and (iii) obligations to pay insurance premiums;

(n) Indebtedness representing deferred compensation to current or former employees, directors, consultants or independent contractors incurred in the Ordinary Course of Business;

(o) surety bonds, deposits and similar obligations permitted under Section 8.02(e) or (f);

(p) unsecured Indebtedness of (A) any Loan Party owing to any other Loan Party or any Subsidiary that is not a Loan Party (so long as such Indebtedness owing to a Subsidiary that is not a Loan Party (1) bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (2) does not require the payment in cash of principal (at maturity or otherwise) prior to ninety-one (91) days following the Maturity Date, and (3) is subordinated to the Obligations on terms reasonably acceptable to the Administrative Agent and as to which at least ten (10) Business Days prior to incurrence thereof, the Borrower Agent has delivered a certificate to the Administrative Agent demonstrating compliance with each of clauses (1) through (3) above), (B) any Subsidiary that is not a Loan Party owing to any other Subsidiary that is not a Loan Party and (C) any Subsidiary that is not a Loan Party owing to any Loan Party; provided that any such Indebtedness described in this clause which is owing to a Loan Party, shall (1) be evidenced by promissory notes in form and substance satisfactory to the Administrative Agent and pledged to the Administrative Agent on terms acceptable to it, (2) be permitted under Section 8.03(c) or (i), and (3) not be forgiven or otherwise discharged for any consideration other than payment in full in cash unless the Administrative Agent otherwise consents;

(q) Revolving Obligations in an aggregate outstanding principal amount not to exceed the "Maximum ABL Facility Amount" (as defined in the Intercreditor Agreement);

(r) other unsecured Indebtedness (i) that bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (ii) has a stated maturity date no earlier than 91 days following the Maturity Date, (iii) as to which at the time of incurrence thereof no Default or Event of Default has occurred and is continuing or would result therefrom, (iv) the aggregate outstanding principal amount of which does not exceed \$2,000,000 at any time, and (v) with respect to which at least ten (10) Business Days prior to each such incurrence, the Borrower Agent has delivered a certificate to the Administrative Agent demonstrating compliance with each of clauses (i) through (iv) above;

(s) Subordinated Debt; and

(t) Refinancing Indebtedness.

8.02 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following ("Permitted Liens"):

(a) Liens in favor of the Administrative Agent pursuant to any Loan Document;

(b) Liens existing on the date hereof as described on Schedule 8.02 (setting forth, as of the Closing Date, the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto) and any renewals or extensions thereof, provided that (i) the Lien does not extend to any additional property, and (ii) the obligations secured or benefited thereby constitutes Refinancing Indebtedness;

(c) Liens for taxes, assessments or other governmental charges, not yet due or which are being Properly Contested, and which in all cases are junior to the Lien of the Administrative Agent;

(d) Liens of carriers, warehousemen, mechanics, materialmen, repairmen, landlords or other like Liens imposed by Law or arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested;

(e) Liens, pledges or deposits in the Ordinary Course of Business in connection with (i) insurance, workers compensation, unemployment insurance and social security legislation, (ii) contracts, bids, government contracts, and surety, appeal, customs, performance and return-of-money bonds and (iii) other similar obligations (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to contracts, statutory requirements, common law or consensual arrangements, other than any Lien imposed by ERISA;

(f) Liens arising in the Ordinary Course of Business consisting of deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature, in each case, incurred in the Ordinary Course of Business;

(g) Liens with respect to minor imperfections of title and easements, rights-of-way, covenants, consents, reservations, encroachments, variations and zoning and other similar restrictions, charges, encumbrances or title defects affecting Real Property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person and do not materially detract from the value of or materially impair the use by the Loan Parties in the Ordinary Course of Business of the property subject to or to be subject to such encumbrance;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 9.01 or securing appeal or other surety bonds related to such judgments, and which in all cases are junior to the Lien of the Administrative Agent;

(i) Liens securing Indebtedness permitted under Section 8.01(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or Fair Market Value, whichever is lower, of the property being acquired on the date of acquisition;

(j) Liens securing Assumed Indebtedness of the Loan Parties or any Subsidiary permitted pursuant to Section 8.01(g); provided that (i) such Liens do not at any time encumber any property other than property of the Subsidiary acquired, or the property acquired, and proceeds thereof in connection with such Assumed Indebtedness and shall not attach to any assets of the Loan Parties theretofore existing or (except for any such proceeds) which arise after the date thereof and (ii) the Assumed Indebtedness and other secured Indebtedness of the Loan Parties secured by any such Lien does not exceed the Fair Market Value of the property being acquired in connection with such Assumed Indebtedness;

(k) Liens on assets of Foreign Subsidiaries of Holdings securing Indebtedness of such Foreign Subsidiaries permitted pursuant to Section 8.01(j);

(l) operating leases or subleases granted by the Loan Parties to any other Person in the Ordinary Course of Business;

(m) Liens (a) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (b) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and (c) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(n) Liens in favor of customs and revenue authorities imposed by Law to secure payment of customs duties in connection with the importation of goods and arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested; and

(o) Liens on assets securing Revolving Obligations which Liens are subject to the Intercreditor Agreement.

8.03 Investments. Make or maintain any Investments, except:

(a) Investments held by the Loan Parties in the form of Cash Equivalents that are subject to the Administrative Agent's Lien and control, pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent;

(b) loans and advances to officers, directors and employees of the Loan Parties and Subsidiaries made in the Ordinary Course of Business in an aggregate amount at any one time outstanding not to exceed \$500,000;

(c) (i) Investments in Subsidiaries outstanding on the date hereof, (ii) Investments in wholly-owned Loan Parties (other than Holdings), (iii) Investments by Subsidiaries that are not Loan Parties in other Subsidiaries that are not Loan Parties, and (iv) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, Investments in Subsidiaries that are not

Loan Parties in an aggregate amount in any fiscal year not to exceed \$100,000; provided that, the Borrower Agent shall have delivered a certificate to the Administrative Agent demonstrating compliance with this clause (iv) at least ten (10) Business Days prior to each such Investment;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 8.01;

(f) Investments existing as of the date hereof as described in Schedule 8.03 (setting forth, as of the Closing Date, the amount, obligor or issuer and maturity, if any, thereof) and extensions or renewals thereof, provided that no such extension or renewal shall be permitted if it would (i) increase the amount of such Investment at the time of such extension or renewal or (ii) result in a Default hereunder;

(g) Permitted Acquisitions;

(h) Swap Agreements otherwise permitted hereunder constituting Investments; and

(i) other Investments not constituting Acquisitions so long as the Payment Conditions are satisfied with respect thereto.

Notwithstanding the terms of this Section 8.03 or Sections 8.04 or 8.05, in no event shall any Loan Party or any Subsidiary sell, lease, convey, assign, transfer or otherwise dispose of material Intellectual Property of the Loan Parties or any Subsidiary to any person who is, (a) in the case of a disposition by any Loan Party, not a Loan Party, or (b) in the case of a non-Loan Party, not Holdings or a Subsidiary, in each case of (a) and (b), other than non-exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles in the ordinary course of business.

8.04 Fundamental Changes. Merge, Divide, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary of Holdings may merge or consolidate with or liquidate or dissolve into a Loan Party; provided, that, (i) the Loan Party shall be the continuing or surviving Person, (ii) a Borrower may not merge into Holdings and (iii) in the case of any merger of a Borrower and a Subsidiary Guarantor, such Borrower shall be the continuing or surviving Person;

(b) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided, that, (i) the Person surviving such merger shall be a wholly-owned Subsidiary of a Loan Party and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person; and

(c) any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party; provided that, when any wholly-owned Subsidiary is merging with another Subsidiary that is not wholly-owned, the wholly-owned Subsidiary shall be the continuing or surviving Person.

8.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of Inventory and, so long as no Event of Default exists or is created thereby, Cash Equivalents, each in the Ordinary Course of Business;

(b) Dispositions in the Ordinary Course of Business of Equipment or fixed assets that are obsolete, worn out or no longer useful to the Core Business for so long as (i) no Event of Default has occurred and is continuing at the time of such Disposition, (ii) the sum of the NOLV of such Equipment or fixed assets that are of the type included in the Borrowing Base plus the fair market value of any such other Equipment or fixed assets does not exceed \$1,000,000 in any twelve-month period and (iii) all proceeds thereof are applied to the extent required in accordance with Section 2.06(c);

(c) Dispositions that constitute (i) an Investments permitted under Section 8.03, (ii) a Lien permitted under Section 8.02, (iii) a merger, dissolution, consolidation or liquidation permitted under Section 8.04(a), or (iv) a Restricted Payment permitted under Section 8.06;

(d) Dispositions that result from a casualty or condemnation in respect of such property or assets and is not otherwise an Event of Default so long as all proceeds thereof are applied in accordance with Section 2.06(c);

(e) (x) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other Intellectual Property rights and (y) the licensing, on an exclusive basis, of patents, trademarks, copyrights, and other Intellectual Property rights (as long as such patents, trademarks, copyrights, and other Intellectual Property rights are not Borrowing Base Assets) in the Ordinary Course of Business in jurisdictions which Loan Parties are not operating or to the extent Loan Parties do not use such Intellectual Property;

(f) (i) the lapse of immaterial registered patents, trademarks, copyrights and other Intellectual Property to the extent maintaining such registered Intellectual Property is not economically desirable in the conduct of its business or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights in the Ordinary Course of Business so long as in each case under clauses (i) and (ii), such lapse or abandonment is not materially adverse to the interests of the Secured Parties;

(g) the leasing or subleasing of assets (other than sale and leaseback transactions prohibited under Section 8.15) in the Ordinary Course of Business;

(h) Dispositions that consist of the sale or discount in the Ordinary Course of Business of overdue accounts receivable that are not Eligible Accounts in connection with the compromise or collection thereof, provided that the Net Cash Proceeds from such Disposition shall be deposited in the Concentration Account;

(i) Dispositions among the Loan Parties or by any Subsidiary to a Loan Party;

(j) Dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party; and

(k) other Dispositions of assets other than Borrowing Base Assets so long as (i) no Event of Default has occurred and is continuing at the time of such Disposition and (ii) the Fair Market Value of all such assets Disposed of, whether individually or in a series of related transactions, does not exceed \$500,000 in the aggregate in any fiscal year.

8.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, in each case (except Section 8.06(a)) so long as no Default or Event of Default shall have occurred and be continuing (both before or as a result of the making of such Restricted Payment):

(a) each Subsidiary may make Restricted Payments, directly or indirectly, to any Borrower;

(b) Holdings and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) Holdings, the Borrowers and each Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other common Equity Interests or warrants or options to acquire any such shares in connection with customary employee or management agreements, plans or arrangements, all in an aggregate amount not to exceed \$1,000,000 during the term of this Agreement;

(d) [Reserved;]

(e) Restricted Payments by Borrowers to the extent necessary to permit Holdings to pay administrative costs and expenses related to the business of Borrowers and their Subsidiaries, so long as Holdings applies the amount of such Restricted Payment for such purpose;

(f) the Company may make Permitted Tax Distributions; and

(g) Holdings shall be permitted to make other cash Restricted Payments so long as the Payment Conditions are satisfied with respect thereto.

8.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrowers and their Subsidiaries on the date hereof or any business substantially related or incidental thereto.

8.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of any Loan Party, whether or not in the Ordinary Course of Business, other than

(a) transactions on fair and reasonable terms substantially as favorable to such Loan Party or Subsidiary as would be obtainable by such Loan Party or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate;

(b) payment of reasonable and customary compensation and benefits (including equity awards) payable or provided to officers, directors, employees and independent contractors;

(c) transactions between or among the Loan Parties;

(d) Restricted Payments permitted under Section 8.06;

(e) Investments permitted under Section 8.03 and Fundamental Changes permitted under Section 8.04; and

(f) transactions pursuant to agreements in existence or contemplated on the Closing Date as set forth on Schedule 8.08 or any amendment thereto to the extent such an amendment is not adverse to the Secured Parties in any material respect.

8.09 Burdensome Agreements. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document or the Term Loan Documents) that:

(a) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; or

(b) limits the ability (i) of any Subsidiary to make Restricted Payments to Holdings or any Borrower or to otherwise transfer property to Holdings or any Borrower, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrowers or become a direct Borrower hereunder, or (iii) of any Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 8.01(f) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness.

8.10 Use of Proceeds. Use the proceeds of the Term Loans, whether directly or indirectly, including through or by any Controlled Person, and whether immediately, incidentally or ultimately, (a) in any manner that might cause the Term Loans or the application of such proceeds to violate Regulations T, U or X of the Board of Governors of the Federal Reserve System, in each case as in effect on the date or dates of such Term Loan, or (b) (i) 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, (ii) to fund, finance or facilitate any activities, business or transaction of or with any Sanctioned Person or in any Designated Jurisdiction, or (iii) in any other manner that would result in the violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws applicable to any party hereto.

8.11 Prepayment of Indebtedness; Amendment to Material Contracts.

(a) Make or pay, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal, interest, fees or other amounts due on any Indebtedness (other than the Obligations), 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 Indebtedness (other than the Obligations), except for the following to the extent permitted by applicable Subordination Provisions:

(i) payments when due of regularly scheduled interest and principal payments (including mandatory prepayments arising as a result of a change of control or sale of substantially all assets);

(ii) payments made through the incurrence of Refinancing Indebtedness with respect to such Indebtedness;

(iii) payments of secured Indebtedness permitted hereunder that become due as a result of a voluntary Disposition permitted hereunder of the property securing such Indebtedness;

(iv) payments made solely from and substantially contemporaneously with the proceeds of the issuance of Equity Interests by Holdings (other than Disqualified Equity Interests);

(v) optional payments or prepayments in respect of any Indebtedness, provided, that, as of the date of any such payment or prepayment and after giving effect thereto, the Payment Conditions are satisfied; and

(vi) payments of the Revolving Obligations not prohibited under the Intercreditor Agreement.

(b) Amend, modify or change in any manner any term or condition of (i) any Material Contract, (ii) the Tax Receivable Agreement or (iii) any Indebtedness permitted under Section 8.01(b), (d), (f), (g), (h) or (r), in each case, so that the terms and conditions thereof are less favorable in any material respect to the Administrative Agent or the Term Loan Lenders.

8.12 Financial Covenant. Permit Availability to be less than the greater of (i) 15.0% of the sum of (x) the Maximum Revolving Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) and (y) the Borrowing Base, and (ii) \$11,000,000 at any time.

8.13 Creation of New Subsidiaries. Create or acquire any new Subsidiary after the Closing Date other than Subsidiaries created or acquired in accordance with Section 7.12.

8.14 Securities of Subsidiaries. Permit any Subsidiary to issue any Equity Interests (whether for value or otherwise) to any Person other than a Loan Party.

8.15 Sale and Leaseback. Enter into any agreement or arrangement with any other Person providing for the leasing by any Loan Party or any Subsidiary of real or personal property which has been or is to be sold or transferred by any Loan Party or any Subsidiary to such other Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of a Loan Party or any Subsidiary.

8.16 Organization Documents; Fiscal Year. (a) Amend, modify or otherwise change any of its Organization Documents in any case in any manner that could have a material adverse effect on the interests of the Secured Parties, or (b) change its fiscal year, except with the consent of the Administrative Agent.

8.17 Holdings Covenant. Cause Holdings not to engage in any business activities, hold any assets or incur any Indebtedness other than (i) acting as a holding company and transactions incidental thereto, including maintaining policies of insurance with respect to directors and officers liability and other insurable risks customary for similarly situated companies, (ii) entering into the Loan Documents and the transactions required herein or permitted herein to be performed by Holdings, (iii) entering into the agreements related to and consummating the Transactions, (iv) receiving and distributing the dividends, distributions and payments permitted to be made to Holdings pursuant to Section 8.06, (v) entering into engagement letters and similar type contracts and agreements with attorneys, accountants and other professionals, (vi) owning the Equity Interests of the Company, (vii) issuing Equity Interests as permitted hereunder, (viii) engaging in activities necessary or incidental to the director, officer and/or employee option incentive plan at Holdings,

(ix) providing guarantees for the benefit of a Borrower to the extent such Person is otherwise permitted to enter into the transaction under this Agreement (including guaranties of lease obligations) and (x) holding nominal deposits in deposit accounts in connection with consummating any of the foregoing transactions. Holdings shall preserve, renew and keep in full force and effect its existence (and perform ministerial activities and make payments of taxes and administrative fees, in each case, to maintain its existence). Holdings shall not merge or consolidate with or into any other Person.

8.18 Tax Receivable Agreement. Terminate, or agree to the termination of, the Tax Receivable Agreement.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

9.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three days after the same becomes due, any interest on any Loan, or any commitment or other fee due hereunder, or (iii) within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained (i) in any of Sections 7.01(a), 7.01(b), 7.01(c), 7.02(a) to the extent a Reporting Trigger Period exists, 7.03, 7.05, 7.07, 7.10, or 7.11, Article VIII or the Post-Closing Agreement, or (ii) in any of Sections 4.04, 7.02(a) to the extent a Reporting Trigger Period does not exist, 7.02(b), 7.02(c), 7.02(e) or 7.02(f) and such failure continues for three (3) or more Business Days; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the earlier of (i) receipt of notice of such default by a Responsible Officer of the Borrower Agent from the Administrative Agent, or (ii) any Responsible Officer of any Loan Party becomes aware of such default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party or its Subsidiaries herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made in any material respect; or

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(e) Cross-Default. (i) With respect to (x) the Revolving Obligations or (y) any other Indebtedness or guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, any Loan Party or its Subsidiaries (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, and after passage of any grace period) in respect of any such Indebtedness or guarantee, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, and such default continues for more than the grace or cure period, if any, therein specified, the effect of which default or other event is to cause, or to permit the holder of such Indebtedness or beneficiary of such guarantee (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Loan Party or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by a Loan Party or any Subsidiary as a result thereof is greater than Threshold Amount; or

(f) Insolvency Events. Any Insolvency Event shall occur with respect to any Loan Party; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or

any material part of the property of any Loan Party and is not released, vacated or fully bonded within 30 days after its issue or levy; (iii) any Loan Party is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business; (iv) there is a cessation of any material part of any Loan Party's business for a material period of time; or (v) a material portion of the Collateral or property or assets of a Loan Party is taken or impaired through condemnation; or

(h) Judgments. There is entered against any Loan Party (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments or orders (including for injunctive relief) that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, such judgment or order remains unvacated and unpaid and either (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 45 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any Loan Document, or any Lien granted thereunder, at any time after its execution and delivery and for any reason, other than as expressly permitted hereunder or upon Payment in Full, ceases to be in full force and effect (except with respect to immaterial assets); or any Borrower or any other Person contests in any manner the validity or enforceability of any Loan Document or any Lien granted to the Administrative Agent pursuant to the Security Instruments; or any Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or any party to the Intercreditor Agreement contests in any manner the validity or enforceability of the Intercreditor Agreement or denies that it has any liability or obligation thereunder or purports to revoke, terminate or rescind the Intercreditor Agreement; or

(k) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any contract to which it is party or fails to observe or perform any other agreement or condition relating to any such contract to which it is party or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such contract to terminate such contract, in each case which would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(l) Indictment. (i) Any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any material portion of Collateral, or (ii) any director or senior officer of any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, unless such director or senior officer promptly resigns or is removed or replaced or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any material portion of Collateral; or

(m) Subordinated Debt. (i) The Subordination Provisions shall fail to be enforceable by the Term Loan Lenders (which have not effectively waived the benefits thereof) in accordance with the terms thereof; or (ii) the principal or interest on any Loan or other Obligations shall fail to constitute "designated senior debt" (or any other similar term) under any document, instrument or agreement evidencing such Subordinated Debt; or (iii) any Loan Party or any of its Subsidiaries shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, or (B) that any of such Subordination Provisions exist for the benefit of any Secured Party; or (iv) any Loan Party or any Subsidiary thereof or any other Person fails to observe or perform any of the Subordination Provisions; or

(n) Uninsured Loss. A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds the Threshold Amount; or

(o) Change of Control. There occurs any Change of Control.

9.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may, and at the direction of the Required Lenders shall, take any or all of the following actions:

(a) adjust or modify the Borrowing Base or the calculation thereof in any respect;

(b) declare the unpaid principal amount of all outstanding Term Loans, all interest accrued and unpaid thereon, and all other Obligations owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

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(c) require that the Borrowers Cash Collateralize any other Obligations that are contingent or not yet due and payable in amount determined by the Administrative Agent in accordance with this Agreement; and

(d) exercise on behalf of itself and the Term Loan Lenders all rights and remedies available to it and the Term Loan Lenders under the Loan Documents or applicable Law;

provided, however, that upon the occurrence of an Event of Default under Section 9.01(f), the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Term Loan Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

Any Event of Default occurring hereunder shall be deemed to exist and be continuing until waived by the Administrative Agent and all or any required portion of the Term Loan Lenders in accordance with Section 11.01, notwithstanding any actual or purported remedy or cure of the actions, facts, circumstances or conditions giving rise to such Event of Default.

9.03 Application of Funds.

(a) Subject to Section 9.03(b) below, all payments made by Loan Parties in respect of the Obligations shall be applied (a) first, as specifically required in the Loan Documents; (b) second, to Obligations then due and owing; (c) third, to other Obligations specified by Borrower Agent; and (d) fourth, as determined by Agent in its discretion.

(b) Notwithstanding any provision to the contrary contained herein, after the exercise of remedies provided for in Section 9.02 (or after the Term Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall, subject to the provisions of Section 2.16, be applied by the Administrative Agent in the following order:

First, to all fees, indemnities, expenses and other amounts (including reasonable fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article IV) due to the Administrative Agent in its capacity as such, until paid in full;

Second, to all Protective Advances payable to the Administrative Agent until paid in full;

Third, to that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, and other Obligations expressly described in clauses Fourth through Sixth below) payable to the Term Loan Lenders (including reasonable fees, charges and disbursements of counsel to the respective Term Loan Lenders and amounts payable under Article III, all to the extent required to be paid by the Loan Parties under the Loan Documents), ratably among them in proportion to the respective amounts described in this clause Third payable to them until paid in full;

Fourth, to that portion of the Obligations constituting accrued and unpaid interest on the Term Loans and other Obligations, ratably among the Term Loan Lenders in proportion to the respective amounts described in this clause Fourth payable to them until paid in full;

Fifth, to that portion of the Obligations constituting unpaid principal of the Term Loans until paid in full;

Sixth, to all other Obligations that are due and payable to the Administrative Agent and the other Secured Parties, or any of them, on such date, ratably based on the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date until paid in full; and

Last, the balance, if any, after Payment in Full, to the Borrowers or as otherwise required by Law.

(c) The allocations set forth in this Section are solely to determine the rights and priorities of Administrative Agent and Secured Parties as among themselves, and may be changed by agreement among them without the consent of any Borrower. This Section is not for the benefit of or enforceable by any Loan Party.

(d) For purposes of Section 9.03(b), “paid in full” of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Event, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any proceeding under Debtor Relief Laws.

(e) Administrative Agent shall not be liable for any application of amounts made by it in good faith under this Section 9.03, notwithstanding the fact that any such application is subsequently determined to have been made in error except as a direct and sole result of the gross negligence or willful misconduct of the Administrative Agent.

ARTICLE X ADMINISTRATIVE AGENT

10.01 Appointment and Authority. Each of the Term Loan Lenders hereby irrevocably appoints Callodine to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and Callodine hereby accepts such appointment. The provisions of this Article are solely for the benefit of the Administrative Agent and the Term Loan Lenders, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. The Administrative Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts, Eligible Credit Card Receivables, Eligible Inventory, Eligible Intellectual Property and Eligible Machinery and Equipment or whether to impose or release any Reserve, or whether any conditions to funding any Term Loan have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Administrative Agent from liability to any Term Loan Lender or other Person for any error in judgment or mistake.

10.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Term Loan Lenders.

10.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Term Loan Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable to any other Secured Party for any action taken or not taken by it under or in connection with the Loan Documents, except for direct (as opposed to consequential) losses directly and solely caused by the Administrative Agent's gross negligence or willful misconduct. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Term Loan Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the Loan Documents). The Administrative Agent shall not be liable for, and shall be fully justified in, failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of the Term Loan Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the Loan Documents) as it reasonably deems appropriate. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower Agent, or a Term Loan Lender.

The Administrative Agent shall not be responsible for or have any duty 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 thereunder 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 therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means) or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.04 Reliance by the Administrative Agent. The 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, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan that by its terms must be fulfilled to the satisfaction of a Term Loan Lender, the Administrative Agent may presume that such condition is satisfactory to such Term Loan Lender unless the Administrative Agent shall have received notice to the contrary from such Term Loan Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts 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.

10.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or 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 Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

10.06 Resignation of the Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Term Loan Lenders and the Borrower Agent. Upon receipt of any such notice of resignation, the Required Lenders shall have the

right, in consultation with the Borrower Agent, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Term Loan Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower Agent and the Term Loan 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 held by the Administrative Agent on behalf of the Term Loan Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral 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 the Administrative Agent shall instead be made by or to each Term Loan Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as the Administrative Agent.

10.07 Non-Reliance on the Administrative Agent and Other Lenders. Each Term Loan Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Term Loan Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

10.08 [Reserved].

10.09 The Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Term Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, 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 Term 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 Term Loan Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Term Loan Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Term Loan Lenders and the Administrative Agent under Sections 2.09 and 11.04) 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 Term Loan Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Term Loan Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Term Loan Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Term Loan Lender to authorize the Administrative Agent to vote in respect of the claim of any Term Loan Lender in any such proceeding.

The Loan Parties and the Secured Parties hereby irrevocably authorize the Administrative Agent, based upon the instruction of the Required Lenders, to (a) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Section 363 of the Bankruptcy Code of the United States or any similar Laws in any other jurisdictions to which a Loan Party is subject, or (b) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of the Administrative Agent to credit bid and purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Secured Parties whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase). Upon request by the Administrative Agent or the Borrower Agent at any time, the Secured Parties will confirm in writing the Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this [Section 10.09](#).

10.10 Collateral Matters. The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any Collateral (i) upon the occurrence of the Facility Termination Date, (ii) that is Disposed or to be Disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, or (iii) subject to [Section 11.01](#), if approved, authorized or ratified in writing by the Required Lenders;

(b) to release or subordinate any Lien (and any Indebtedness secured thereby) on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property (i) that is permitted by [Section 8.02\(i\)](#), so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release or subordination, as the case may be, a certificate of a Responsible Officer certifying that such Lien (and the Indebtedness secured thereby) is permitted by [Section 8.02\(i\)](#) (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), or (ii) if such release or subordination is required under the Intercreditor Agreement; and

(c) to release any Subsidiary from its obligations under the Loan Documents, and release any Lien granted by such Subsidiary thereunder, if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder, so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release a certificate of a Responsible Officer certifying that such transaction is permitted by this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents pursuant to this [Section 10.10](#).

10.11 Other Collateral Matters.

(a) Care of Collateral. The Administrative Agent shall have no obligation to assure that any Collateral exists or is owned by a Borrower, or is cared for, protected or insured, nor to assure that the 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.

(b) Lenders as Agent For Perfection by Possession or Control. The Administrative Agent and Secured Parties appoint each Term Loan Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Term Loan Lender, to the extent such Liens are perfected by possession or control. If any Term Loan Lender obtains possession or control of any Collateral, it shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request, deliver such Collateral to the Administrative Agent or otherwise deal with it in accordance with the Administrative Agent's instructions.

(c) Reports. The Administrative Agent shall promptly forward to each Term Loan Lender, when complete, copies of any Field Exam or appraisal report prepared by or for the Administrative Agent with respect to any Borrower or Collateral ("Report"). Each Term Loan Lender agrees (a) that neither Callodine nor the 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; (b) that the Reports are not intended to be comprehensive audits or examinations, and that the Administrative Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon Borrowers' books and records as well as upon representations of Borrowers' officers and employees; and (c) to keep all Reports confidential and strictly for such Term Loan Lender's internal use, and not to distribute any Report (or the contents thereof) to any Person (except to such Term Loan Lender's Participants, attorneys and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each Term Loan Lender shall indemnify and hold harmless the Administrative Agent and any other Person preparing a Report from any action such Term Loan Lender may take as a result of or any conclusion it may draw from any Report, as well as from any claims arising as a direct or indirect result of the Administrative Agent furnishing a Report to such Term Loan Lender.

10.12 [Reserved]

10.13 ERISA Related Provisions.

(a) Each Term Loan Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, 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, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Term Loan 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 the Term Loans or the Term Loan Commitments,

(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 Term Loan Lender's entrance into, participation in, administration of and performance of the Term Loans or the Term Loan Commitments and this Agreement,

(iii) (A) such Term Loan 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 Term Loan Lender to enter into, participate in, administer and perform the Term Loans or the Term Loan Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loans or the Term Loan Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Term Loan Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Term Loan Lender's entrance into, participation in, administration of and performance of the Term Loans or the Term Loan Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Term Loan Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Term Loan Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Term Loan 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, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Administrative Agent or the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Term Loan Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Term Loan Lender with respect to the entrance into, participation in, administration of and performance of the Term Loans or the Term Loan Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Term Loan Lender with respect to the entrance into, participation in, administration of and performance of the Term Loans and the Term Loan Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Term Loan Lender with respect to the entrance into, participation in, administration of and performance of the Term Loans and the Term Loan Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Term Loans and the Term Loan Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent or the Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Term Loans and the Term Loan Commitments or this Agreement.

(c) The Administrative Agent and the Arranger hereby informs the Term Loan Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Term Loans and the Term Loan Commitments and this Agreement, (ii) may recognize a gain if it extended the Term Loans or the Term Loan Commitments for an amount less than the amount being paid for an interest in the Term Loans or the Term Loan Commitments by such Term Loan Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

10.14 Recovery of Erroneous Payments. Notwithstanding anything to the contrary in this Agreement, if at any time the Administrative Agent determines (in its sole and absolute discretion) that it has made a payment hereunder in error to any Term Loan Lender or any other Secured Party, whether or not in respect of an Obligation due and owing by any Loan Party at such time, where such payment is a Rescindable Amount, then in any such event, each such Person receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Person in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Term Loan Lender and each other

Secured Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another), “good consideration”, “change of position” or similar defenses (whether at law or in equity) to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Term Loan Lender and each other Secured Party that received a Rescindable Amount promptly upon determining that any payment made to such Person comprised, in whole or in part, a Rescindable Amount. Each Person’s obligations, agreements and waivers under this Section 10.14 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Term Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE XI MISCELLANEOUS

11.01 Amendments, Etc. Subject to Sections 2.14 and 3.03(b) above,

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower Agent or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that, except as provided in, or contemplated by, Section 2.14, no such amendment, waiver or consent shall:

(i) extend or increase the Term Loan Commitment of any Term Loan Lender without the written consent of such Term Loan Lender;

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (but excluding the delay or waiver of any mandatory prepayment) of principal, interest, fees or other amounts due to the Term Loan Lenders (or any of them), including the Maturity Date, in each case without the written consent of each Term Loan Lender directly affected thereby;

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(iii) reduce the principal of, or the rate of interest specified herein on, any Term Loan, or reduce any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Term Loan Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” (so long as such amendment does not result in the Default Rate being lower than the interest rate then otherwise applicable to the Term Loans));

(iv) change (i) Section 2.13 in a manner that would alter the pro rata sharing of payments required thereby or (ii) Section 9.03, in each case without the written consent of each Term Loan Lender directly affected thereby;

(v) change any provision of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Term Loan Lender;

(vi) [reserved];

(vii) release any material Borrower from this Agreement or any material Security Instrument to which it is a party without the written consent of each Term Loan Lender, except to the extent such Borrower is the subject of a Disposition permitted by Section 8.05 (in which case such release may be made by the Administrative Agent acting alone);

(viii) release, or subordinate the Administrative Agent’s Lien on, all or substantially all of the Collateral without the written consent of each Term Loan Lender; or

(ix) without the prior written consent of each Term Loan Lender, impose any materially greater restriction on the ability of any Term Loan Lender to assign any of its rights or obligations hereunder.

(b) In addition to the foregoing, (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Term Loan Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the respective parties thereto; and (iii) the Administrative Agent and the Borrower Agent shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower Agent shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any such provision.

(c) [reserved]

(d) If any Term Loan Lender does not consent (a “Non-Consenting Lender”) to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Term Loan Lender and that has been approved by the Required Lenders, the Borrower may replace such Non-Consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

(e) No Loan Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Term Loan Lender or its Affiliates as consideration for agreement by such Term Loan Lender to any amendment, waiver, consent or release with respect to any Loan Document, unless such remuneration or value is concurrently paid, on the same terms, on a ratable basis to all Term Loan Lenders providing their agreement. Notwithstanding the terms of this Agreement or any amendment, waiver, consent or release with respect to any Loan Document, Non-Consenting Lenders shall not be entitled to receive any fees or other compensation paid to the Term Loan Lenders in connection with any amendment, waiver, consent or release approved in accordance with the terms of this Agreement by the Required Lenders.

(f) IN NO EVENT SHALL THE REQUIRED LENDERS, WITHOUT THE PRIOR WRITTEN CONSENT OF EACH TERM LOAN LENDER, DIRECT THE ADMINISTRATIVE AGENT TO ACCELERATE AND DEMAND PAYMENT OF THE TERM LOANS HELD BY ONE TERM LOAN LENDER WITHOUT ACCELERATING AND DEMANDING PAYMENT OF ALL OTHER LOANS. EACH TERM LOAN LENDER AGREES THAT, EXCEPT AS OTHERWISE PROVIDED IN ANY OF THE LOAN DOCUMENTS AND WITHOUT THE PRIOR WRITTEN CONSENT OF THE REQUIRED LENDERS, IT WILL NOT TAKE ANY LEGAL ACTION OR INSTITUTE ANY ACTION OR PROCEEDING AGAINST ANY LOAN PARTY WITH RESPECT TO ANY OF THE OBLIGATIONS OR COLLATERAL, OR ACCELERATE OR OTHERWISE ENFORCE ITS PORTION OF THE OBLIGATIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO TERM LOAN LENDER MAY EXERCISE ANY RIGHT THAT IT MIGHT OTHERWISE HAVE UNDER APPLICABLE LAW TO CREDIT BID AT FORECLOSURE SALES, UNIFORM COMMERCIAL CODE SALES OR OTHER SIMILAR SALES OR DISPOSITIONS OF ANY OF THE COLLATERAL EXCEPT AS AUTHORIZED BY THE REQUIRED LENDERS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION OR ELSEWHERE HEREIN, EACH TERM LOAN LENDER SHALL BE AUTHORIZED TO TAKE SUCH ACTION TO PRESERVE OR ENFORCE ITS RIGHTS AGAINST ANY LOAN PARTY WHERE A DEADLINE OR LIMITATION PERIOD IS OTHERWISE APPLICABLE AND WOULD, ABSENT THE TAKING OF SPECIFIED ACTION, BAR THE ENFORCEMENT OF OBLIGATIONS HELD BY SUCH TERM LOAN LENDER AGAINST SUCH LOAN PARTY, INCLUDING THE FILING OF PROOFS OF CLAIM IN ANY INSOLVENCY PROCEEDING.

11.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or in the case of notices otherwise expressly provided herein (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to a Loan Party or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02, as changed pursuant to subsection (d) below; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire, as changed pursuant to subsection (d) below (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices 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 delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Term Loan Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Term Loan Lender pursuant to Article II if such Term Loan Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers 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.

Unless the 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), provided that 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, 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.

(c) [Reserved].

(d) Change of Address, Etc. Each of the Borrowers and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower Agent and the Administrative Agent. In addition, each Term Loan Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Term Loan Lender.

(e) Reliance by Administrative Agent and Term Loan Lenders. The Administrative Agent and the Term Loan Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Administrative Agent, each Term Loan Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers.

11.03 No Waiver; Cumulative Remedies. No failure by any Term Loan Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and

not exclusive of any rights, remedies, powers and privileges provided by law. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrowers or any other Loan Party or any of them (including enforcement action with respect to any Collateral) shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9.02 for the benefit of all the Secured Parties; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) [reserved], (c) any Term Loan Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.14), or (d) any Term Loan Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Borrower under any Debtor Relief Law but only to the extent the Administrative Agent shall have failed to do so within a reasonable time after notice; and provided further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.14, any Term Loan Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket expenses (including any Extraordinary Expenses) incurred by the Administrative Agent and its Affiliates, (A) in connection with this Agreement and the other Loan Documents, including without limitation (1) the reasonable fees, charges and disbursements of counsel for the Administrative Agent, (2) the reasonable fees, charges and disbursements of outside consultants for the Administrative Agent, (3) the reasonable fees, charges and disbursements of appraisers (subject to the limitations set forth in Section 7.10), (4) Field Exams (subject to the limitations set forth in Section 7.10), (5) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, and (6) environmental site assessments, (B) in connection with (1) the syndication of the credit facilities provided for herein, (2) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (3) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, or (4) any workout, restructuring or negotiations in respect of any Obligations, and (ii) all reasonable out-of-pocket expenses incurred by the Secured Parties who are not the Administrative Agent or any Affiliate of any of them, after the occurrence and during the continuance of an Event of Default; provided, that, such Secured Parties shall be entitled to reimbursement for no more than one counsel representing all such Secured Parties (absent a conflict of interest in which case the Secured Parties may engage and be reimbursed for additional counsel with respect to such conflict) (the foregoing, collectively being referred to as "Secured Party Expenses").

(b) Indemnification by the Borrowers. Each Loan Party shall indemnify the Administrative Agent (and any sub-agent thereof), each other Secured Party and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold harmless each Indemnitee from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 4.01), (ii) any Term Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Secured Party to, a Controlled Account Bank or other Person which has entered into a control agreement with any Secured Party hereunder or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties.

(c) Indemnification of Administrative Agent by Lenders. To the extent that (i) the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, or (ii) any liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever are imposed on, incurred by, or asserted against, any Agent or a Related Party (an “Agent Indemnatee”) in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by any Agent Indemnatee in connection therewith (collectively, “Agent Indemnatee Liabilities”), then each Term Loan Lender severally agrees to pay to the Administrative Agent for the benefit of such Agent Indemnatee, such Term Loan Lender’s Ratable Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such Agent Indemnatee Liabilities, so long as the Agent Indemnatee Liabilities were incurred by or asserted against the Administrative Agent (or any such sub-agent), or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent). The obligations of the Term Loan Lenders under this subsection (c) are subject to the provisions of Section 2.12(d). In no event shall any Term Loan Lender have any obligation hereunder to indemnify or hold harmless an Agent Indemnatee with respect to any Agent Indemnatee Liabilities that are determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Agent Indemnatee. In the Administrative Agent’s discretion, it may reserve for any Agent Indemnatee Liabilities of an Agent Indemnatee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to the Secured Parties. If the Administrative Agent is sued by any creditor representative, debtor-in-possession or other Person for any alleged preference or fraudulent transfer, then any monies paid by the 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 promptly reimbursed to the Administrative Agent by each Term Loan Lender to the extent of its Ratable Share thereof.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waives, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof. No Indemnatee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Term Loan Lender and the occurrence of the Facility Termination Date.

11.05 Marshalling; Payments Set Aside. None of the Administrative Agent or Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or against any Obligations. To the extent that any payment by or on behalf of any Loan Party is made to a Secured Party, or a Secured Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Secured Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Term Loan Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate, in the applicable currency of such recovery or payment. The obligations of the Loan Parties under clause (a) of this section and the Term Loan Lenders under clause (b) of this section shall survive the occurrence of the Facility Termination Date.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder (except in connection with the joinder of a Loan Party in accordance with Section 7.12) without the prior written consent of the Administrative Agent and each Term Loan Lender and no Lender may assign or otherwise transfer any of

its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, 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 subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Secured Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Term Loan 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 Commitment(s) and the Term Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts. Except in the case of (A) an assignment of the entire remaining amount of the assigning Term Loan Lender's Term Loans at the time owing to it under the Term Loan Facility or (B) an assignment to a Term Loan Lender, an Affiliate of a Term Loan Lender or an Approved Fund, the aggregate amount of the principal outstanding balance of the Term Loans of the assigning Term Loan Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, in the case of any assignment in respect of the Term Loan Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower Agent otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) 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 Term Loans. No Lender shall assign all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment to an Eligible Assignee except to the extent required by subsection (b)(i)(B) of this Section; provided that the Borrower Agent shall be deemed to have given the consent required in the definition of "Eligible Assignee" to such assignment if Borrower Agent has not, on behalf of all Borrowers, responded in writing within ten (10) Business Days of a request for consent.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all "know your customer" documentation.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrowers or any of a Borrower's Affiliates or Subsidiaries, (B) [reserved], or (C) to a natural person.

(vi) [Reserved]

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Term Loan Lender under this Agreement, and the assigning Term Loan Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Term Lender's rights and obligations under this Agreement, such Term Loan Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Term Loan Lender. Any assignment or transfer by a Term Loan Lender of rights or obligations under this Agreement that does not comply

with this subsection shall be treated for purposes of this Agreement as a sale by such Term Loan Lender of a participation in such rights and obligations in accordance with [Section 11.06\(d\)](#).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (and such agency being solely for tax purposes) (in such capacity, subject to [Section 11.18](#)), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Term Loan Lenders and principal amounts of the Term Loans and Obligations owing to, each Term Loan Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Term Loan Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Term Loan Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower Agent and any Term Loan Lender at any reasonable time and from time to time upon reasonable prior written notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Term Loan Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Term Loan Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or a Borrower or any of the Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Term Loan Lender's rights and/or obligations under this Agreement (including all or a portion of its Term Loans owing to it); provided that (i) such Term Loan Lender's obligations under this Agreement shall remain unchanged, (ii) such Term Loan Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent and the Term Loan Lenders shall continue to deal solely and directly with such Term Loan Lender in connection with such Term Loan Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Term Loan Lender sells such a participation shall provide that such Term Loan 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 Term Loan Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to [Section 11.01](#) that affects such Participant. Subject to subsection (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of [Sections 3.01](#), [3.04](#) and [3.05](#) to the same extent as if it were a Term Loan Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of [Section 11.08](#) as though it were a Lender, provided such Participant agrees to be subject to [Section 2.13](#) as though it were a Lender.

If any Term Loan Lender (or any assignee thereof) sells a participation, such Term Loan Lender (or such assignee) shall, acting solely for this purpose as an agent of the 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 Term Loan Lender (nor any assignee thereof) 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 Term Loan Lender (or such assignee) shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under [Section 3.01](#) or [3.04](#) than the applicable Term Loan Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower Agent's prior written consent. A Participant that would be a Foreign Lender if it were a Term Loan Lender shall not be entitled to the benefits of [Section 3.01](#) unless the Borrower Agent is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with [Section 3.01\(e\)](#) as though it were a Term Loan Lender.

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

11.07 Treatment of Certain Information; Confidentiality. Each of the Secured Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its branches and Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) 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, (f) subject to an agreement containing provisions substantially the same as (or no less restrictive than) those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any direct or indirect actual or prospective party (or its Related Parties) to any swap, derivative, securitization or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrowers or their Subsidiaries or the Term Loan Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Term Loan Facility; (h) with the consent of the Borrower Agent; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to a Secured Party or any of their respective branches or Affiliates on a nonconfidential basis from a source other than the Loan Parties that is not known to be subject to a confidentiality obligation with respect to such Information or (z) is independently discovered or developed by a party hereto without utilizing any Information received from a Loan Party or violating the terms of this Section; or to the extent required by a potential or actual insurer or reinsurer in connection with providing insurance, reinsurance or credit risk mitigation coverage under which payments are to be made or may be made by reference to this Agreement.

For purposes of this Section, “Information” means all information received from any Loan Party or any Subsidiary relating to a Loan Party or any Subsidiary or any of their respective businesses, other than any such information that is available to any Secured Party on a nonconfidential basis prior to disclosure by a Loan Party or any Subsidiary, provided that, in the case of information received from a Loan Party or any Subsidiary after the date hereof, any information not marked “PUBLIC” at the time of delivery will be deemed to be confidential; provided that any information marked “PUBLIC” may also be marked “Confidential”. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Secured Parties acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (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.

Each of the Loan Parties hereby authorizes the Administrative Agent to publish the name of any Loan Party and the amount of the credit facility provided hereunder in any “tombstone” or comparable advertisement which the Administrative Agent elects to publish. The Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Term Loan Lender and its respective Affiliates is hereby authorized at any time and from time to time, only after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Term Loan Lender or any such Affiliate to or for the credit or the account of the Borrowers against any and all of the obligations of the Borrowers now or hereafter existing under this Agreement or any other Loan Document to such Term Loan Lender, irrespective of whether or not such Term Loan Lender shall have made any demand under this Agreement or any other Loan Document and although

such obligations of the Borrowers may be contingent or unmatured or are owed to a branch or office of such Term Loan different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Term Loan Lender and its respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Term Loan Lender or its respective Affiliates may have. Each Term Loan Lender agrees to notify the Borrower Agent and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Term Loan Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum 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.

11.10 Integration; Effectiveness. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto.

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

Further, the provisions of Sections 3.01, 3.04, 3.05 and 11.04 and Article X shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Term Loan Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Administrative Agent may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Secured Parties against loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.13 Replacement of Lenders. If any Term Loan Lender requests compensation under Section 3.04, if the Borrowers are required to pay any additional amount to any Term Loan Lender or any Governmental Authority for the account of any Term Loan Lender pursuant to Section 3.01, or if any Term Loan Lender fails to approve any amendment, waiver or consent requested by Borrower Agent pursuant to Section 11.01 that has received the written approval of not less than the Required Lenders but also requires the approval of such Term Loan Lender, then in each such case the Borrower Agent may, at its sole expense and effort, upon notice to such Term Loan Lender and the Administrative Agent, require such Term Loan Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower Agent shall have paid to the Administrative Agent the assignment fee specified in Section 11.06(b);

(b) such Term Loan Lender shall have received the following payment of an amount equal to the outstanding principal of its Term Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Agent (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) in the case of any such assignment resulting from the refusal of a Lender to approve a requested amendment, waiver or consent, the Person to whom such assignment is being made has agreed to approve such requested amendment, waiver or consent; and

(e) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Term Loan Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

(b) **EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF 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, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES 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 IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY TERM LOAN LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWERS OR THEIR PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(c) **EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THAT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS SECTION 11.14 ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.**

(d) **EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.**

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

11.16 Electronic Execution; Electronic Records; Counterparts. This Agreement, any Loan Document, any Assignment and Assumption and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. The words “execution,” “signed,” “signature,” and words of like import in the Loan Documents shall be deemed to include Electronic Signatures or the keeping of 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 Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar applicable state laws based on the Uniform Electronic Transactions Act. Each of the Loan Parties, the Administrative Agent and each Term Loan Lender agrees that any Electronic Signature of such Person on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each Term Loan Lender may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”) which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent nor any Term Loan Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Term Loan Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Term Loan Lender without further verification and (b) upon the request of the Administrative Agent or any Term Loan Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart.

Each of the Loan Parties and each Term Loan Lender hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document or any Communication based solely on the lack of paper original copies of this Agreement, such other Loan Document or such Communication, and (ii) waives any claim against the Administrative Agent, each Term Loan Lender and each of their Related Parties for any liabilities arising solely from the Administrative Agent’s and/or any Term Loan Lender’s reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

11.17 USA PATRIOT Act Notice. Each Term Loan Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Term Loan Lender) hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address

of the Borrowers and other information that will allow such Term Loan Lender or the Administrative Agent, as applicable, to identify the Borrowers in accordance with the PATRIOT Act.

11.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Secured Parties are arm's-length commercial transactions between each Loan Party, on the one hand, and the Secured Parties, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Secured Party is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Affiliates or any other Person and (B) no Secured Party has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iii) the Secured Parties may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and no Secured Party has any obligation to disclose any of such interests to any Loan Party or its Affiliates and (iv) the Secured Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against any Secured Party with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.19 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein; except, that, in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

11.20 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 a 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 a Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

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(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

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any Resolution Authority.

ARTICLE XII CONTINUING GUARANTY

12.01 Guaranty. Holdings and each Subsidiary Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations, whether for principal,

interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrowers to the Secured Parties, arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof) (the "Guaranteed Obligations"). The Administrative Agent's books and records showing the amount of the Guaranteed Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon Holdings and each Subsidiary Guarantor, and conclusive for the purpose of establishing the amount of the Guaranteed Obligations. This guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Guaranteed Obligations which might otherwise constitute a defense to the obligations of Holdings or any Subsidiary Guarantor under this guaranty, and Holdings and each Subsidiary Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

12.02 Rights of Lenders. Holdings and each Subsidiary Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guaranteed Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this guaranty or any Guaranteed Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Term Loan Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guaranteed Obligations. Without limiting the generality of the foregoing, Holdings and each Subsidiary Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of Holdings or any Subsidiary Guarantor under this Agreement or which, but for this provision, might operate as a discharge of Holdings or any Subsidiary Guarantor.

12.03 Certain Waivers. Holdings and each Subsidiary Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrowers or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrowers; (b) any defense based on any claim that Holdings' or any Subsidiary Guarantor's obligations exceed or are more burdensome than those of the Borrowers; (c) the benefit of any statute of limitations affecting Holdings' or any Subsidiary Guarantor's liability hereunder; (d) any right to proceed against the Borrowers, proceed against or exhaust any security for the Guaranteed Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties (other than Payment In Full). Holdings and each Subsidiary Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations, and all notices of acceptance of this guaranty or of the existence, creation or incurrence of new or additional Guaranteed Obligations.

12.04 Obligations Independent. The obligations of Holdings and each Subsidiary Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guaranteed Obligations and the obligations of any other guarantor, and a separate action may be brought against Holdings and each Subsidiary Guarantor to enforce this guaranty whether or not any Borrower or any other person or entity is joined as a party.

12.05 Subrogation. Neither Holdings nor any Subsidiary Guarantor shall exercise and each of them hereby subordinates any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this guaranty until the Facility Termination Date. If any amounts are paid to Holdings or any Subsidiary Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

12.06 Termination; Reinstatement. This guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or Holdings or any Subsidiary Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Guaranteed Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to

be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of Holdings and each Subsidiary Guarantor under this paragraph shall survive termination of this guaranty.

12.07 Subordination. Holdings and each Subsidiary Guarantor hereby subordinates the payment of all obligations and indebtedness of any Loan Party owing to Holdings or any Subsidiary Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrowers, to Holdings or any Subsidiary Guarantor as subrogee of the Secured Parties or resulting from Holdings or any Subsidiary Guarantor's performance under this guaranty, to the Payment in Full of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of the Borrowers to Holdings or any Subsidiary Guarantor shall be enforced and performance received by Holdings or any Subsidiary Guarantor as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of Holdings or any Subsidiary Guarantor under this guaranty.

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12.08 Stay of Acceleration. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed, in connection with any case commenced by or against Holdings or any Subsidiary Guarantor or the Borrowers under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Holdings and each Subsidiary Guarantor immediately upon demand by the Secured Parties.

12.09 Condition of Borrowers. Holdings and each Subsidiary Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as Holdings and each Subsidiary Guarantor requires, and that none of the Secured Parties has any duty, and neither Holdings nor any Subsidiary Guarantor is relying on the Secured Parties at any time, to disclose to Holdings or any Subsidiary Guarantor any information relating to the business, operations or financial condition of the Borrowers or any other guarantor (Holdings and each Subsidiary Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

12.10 [Reserved].

12.11 Limitation of Guaranty. Notwithstanding anything to the contrary herein or otherwise, the Borrowers, the Administrative Agent and the Term Loan Lenders hereby irrevocably agree that the Guaranteed Obligations of Holdings and each Subsidiary Guarantor in respect of the guarantee set forth in this Section 12 at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of Holdings and such Subsidiary Guarantor not constituting a fraudulent transfer or conveyance after giving full effect to the liability under such guarantee set forth in this Section 12 and its related contribution rights but before taking into account any liabilities under any other guarantee by Holdings or such Subsidiary Guarantor.

[Remainder of page is intentionally left blank; signature pages follow.]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

PURPLE INNOVATION, LLC, a Delaware limited liability company

By: /s/ Bennett Nussbaum

Name: Bennett Nussbaum

Title: Chief Financial Officer and Treasurer

GUARANTORS:

PURPLE INNOVATION, INC., a Delaware corporation

By: /s/ Bennett Nussbaum

Name: Bennett Nussbaum

Title: Chief Financial Officer and Treasurer

INTELLIBED, LLC, a Delaware limited liability company

By: /s/ Casey K. McGarvey

Name: Casey K. McGarvey

Title: President, Treasurer and Secretary

ADMINISTRATIVE AGENT:

CALLODINE COMMERCIAL FINANCE, LLC,
as Administrative Agent

By: /s/ Michael Watson

Name: Michael Watson

Title: Managing Director

TERM LOAN LENDERS:

CALLODINE COMMERCIAL FINANCE SPV, LLC, as a Term Loan Lender

By: /s/ Stephen Rainville

Name: Stephen Rainville

Title: CFO/COO

CALLODINE ASSET BASED LOAN FUND II, LP, as a Term Loan Lender

By: /s/ Stephen Rainville

Name: Stephen Rainville

Title: CFO/COO

CALLODINE PERPETUAL ABL FUND SPV, LLC, as a Term Loan Lender

By: /s/ Stephen Rainville

Name: Stephen Rainville

Title: CFO/COO

PLEDGE AND SECURITY AGREEMENT

dated as of August 7, 2023

among

PURPLE INNOVATION, LLC,

PURPLE INNOVATION, INC.

and

INTELLIBED, LLC,

as Grantors,

and

CALLODINE COMMERCIAL FINANCE, LLC,

as the Administrative Agent

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PLEDGE AND SECURITY AGREEMENT

This **PLEDGE AND SECURITY AGREEMENT**, dated as of August 7, 2023 (this “**Agreement**”), is made by each of the Grantors referred to below, in favor of Callodine Commercial Finance, LLC (“**Callodine**”), in its capacity as administrative agent for the Secured Parties (as defined in the Credit Agreement referred to below) (in such capacity, together with its successors and assigns in such capacity, if any, the “**Administrative Agent**”).

RECITALS:

WHEREAS, PURPLE INNOVATION, INC., a Delaware corporation (“**Holdings**”), PURPLE INNOVATION, LLC, a Delaware limited liability company (the “**Company**”), each subsidiary of Holdings listed as a “**Borrower**” on the signature pages thereto (together with the Company and each other Person that executes a joinder agreement and becomes a “**Borrower**” thereunder, each a “**Borrower**” and collectively, the “**Borrowers**”), INTELLIBED, LLC, a Delaware limited liability company (“**Intellibed**”), together with each other Person that executes a joinder agreement and becomes a “**Guarantor**” thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each a “**Guarantor**” and collectively with Holdings and Intellibed, the “**Guarantors**,” and together with the Borrowers and each other Person that executes a supplement hereto and becomes an “**Additional Grantor**” hereunder, each a “**Grantor**” and collectively, the “**Grantors**”), the lenders from time to time party thereto (each a “**Term Loan Lender**” and collectively, the “**Term Loan Lenders**”) and the Administrative Agent are parties to that certain Term Loan Credit Agreement, dated as of the date hereof (such agreement, as amended, restated, supplemented, modified or otherwise changed from time to time, including any replacement agreement therefor, being hereinafter referred to as the “**Credit Agreement**”);

WHEREAS, pursuant to the Credit Agreement, the Term Loan Lenders have agreed to make certain term loans, together with other credit extensions described therein, to the Borrowers (each a “**Term Loan**” and collectively, the “**Term Loans**”);

WHEREAS, it is a condition precedent to the Term Loan Lenders making the Term Loans to the Borrowers that each Grantor shall have granted to the Administrative Agent, for the benefit of the Secured Parties, a pledge of and security interest in (a) the outstanding Equity Interests (as defined in the Credit Agreement) and indebtedness from time to time owned by such Grantor, and (b) substantially all other personal property and fixtures of such Grantor;

WHEREAS, the Grantors are mutually dependent on each other in the conduct of their respective businesses as an integrated operation, with credit needed from time to time by each Grantor often being provided through financing obtained by the other Grantors and the ability to obtain such financing being dependent on the successful operations of all of the Grantors as a whole; and

WHEREAS, each Grantor has determined that the execution, delivery and performance of this Agreement directly benefit, and are in the best interest of, such Grantor;

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Administrative Agent and the Term Loan Lenders to make and maintain the Term Loans and to provide other financial accommodations to the Borrowers pursuant to the Credit Agreement, the Grantors hereby jointly and severally agree with the Administrative Agent, for the benefit of the Secured Parties, as follows:

Section 1 Definitions.

(a) All capitalized terms used in this Agreement and the recitals hereto which are defined in the Credit Agreement or in Article 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (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 UCC on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as the Administrative Agent may otherwise determine; provided further that, if by reason of any mandatory provisions of law, the perfection, the effect of perfection or non-perfection or priority of the security interests granted to the Administrative Agent pursuant to this Agreement are governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, then “**UCC**” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of such perfection, effect of perfection or non-perfection or priority; provided still further, for purposes of the definition of Excluded Assets, “**UCC**” shall mean the Uniform Commercial Code of any applicable jurisdiction.

(b) The following terms shall have the respective meanings provided for in the UCC: “Accounts,” “Account Debtor,” “Cash Proceeds,” “Certificate of Title,” “Chattel Paper,” “Commercial Tort Claim,” “Commodity Account,” “Commodity Contracts,” “Deposit Account,” “Documents,” “Electronic Chattel Paper,” “Equipment,” “Fixtures,” “General Intangibles,” “Goods,” “Instruments,” “Inventory,” “Investment Property,” “Letter-of-Credit Rights,” “Noncash Proceeds,” “Payment Intangibles,” “Proceeds,” “Promissory Notes,” “Record,” “Security Account,” “Software,” “Supporting Obligations” and “Tangible Chattel Paper.”

(c) Reference is hereby made to Section 1.02 of the Credit Agreement, the terms of which are hereby incorporated by reference herein as if fully set forth herein.

(d) As used in this Agreement, the following terms shall have the respective meanings indicated below:

“**Additional Collateral**” has the meaning specified therefor in Section 4(a) hereof.

“**Certificated Entities**” has the meaning specified therefor in Section 5(q) hereof.

“**Copyrights**” means any and all rights in any published and unpublished works of authorship, including (i) copyrights and moral rights, (ii) copyright registrations and recordings thereof and all applications in connection therewith including those listed on Schedule II hereto, (iii) all reissues, renewals, continuations, extensions, restorations and reversions thereof, (iv) income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (v) the right to sue for past, present, and future infringements thereof, (vi) rights and privileges arising under applicable Law with respect to each Grantor’s use of such copyrights and (vii) all of each Grantor’s rights corresponding thereto throughout the world.

“**Excluded Assets**” (a) To the extent that applicable law requires that a Subsidiary of any Grantor issue nominee or directors’ qualifying shares, such nominee or qualifying shares, (b) any intent-to-use trademark application prior to the filing and acceptance of a “Statement of Use”, “Declaration of Use”, “Amendment to Allege Use” or similar notice and/or filing with respect thereto, only to the extent, if any, that, and solely during the period if any, in which, the grant of a security interest therein may impair the validity or enforceability, or result in the voiding, of such intent-to-use trademark application or any registration issuing therefrom under applicable Law, (c) other assets to the extent Administrative Agent determines in its sole judgment that the cost of obtaining such pledge or security interest is excess in relation to the benefit thereof, (d) any Equity Interest of any Excluded Subsidiary acquired, owned or otherwise held directly or indirectly by any Grantor; provided, that, 65% of the Voting Equity Interests and 100% of the non-voting Equity Interests of any such Excluded Subsidiary directly owned by such Grantor may be pledged as Collateral and shall not, for the avoidance of doubt, be deemed to be Excluded Assets, (e) governmental licenses or state or local franchises, charters and authorizations to the extent that the Administrative Agent may not validly possess a security interest therein under applicable laws (including, without limitation, rules and regulations of any governmental authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization not obtained, other than to the extent such prohibition or limitation is rendered ineffective under the UCC or other applicable law notwithstanding such prohibition or was created in contemplation of the grant of security hereunder and other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable law notwithstanding such prohibition, (f) any of such Grantor’s right, title or interest in any license, contract or agreement to which such Grantor is a party as of the date hereof or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the express terms of such license, contract or agreement on the date hereof result in a breach of the terms of, or constitute a default under, such license, contract or agreement (other than to the extent that any such term (i) has been waived, (ii) would be rendered ineffective pursuant to Sections 9-406, 9-408, 9-409 of the UCC or other applicable provisions of the Uniform Commercial Code of any relevant jurisdiction or any other applicable law (including any Debtor Relief Laws) or principles of equity or (iii) was created in contemplation of the grant of security hereunder (for the avoidance of doubt, liens incurred under Section 8.02(i) of the Credit Agreement shall be deemed to not have been created in contemplation of the grant of security hereunder); provided, that (x) immediately upon the ineffectiveness, lapse, termination or waiver of any such provision, the Collateral shall include, and such Grantor shall be deemed to have granted a security interest in, all such right, title and interest as if such provision had never been in effect and (y) the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect the Administrative Agent’s unconditional continuing security interest in and liens upon any rights or interests of a Grantor in or to the proceeds of, or any monies due or to become due under, any such license, contract or agreement, (g) any property of any Grantor, to the extent that any applicable Law or Governmental Authority prohibits the creation of a Lien thereon or such creation would require a consent of any Governmental Authority or any other Person under applicable law (other than any Grantor) that has not been obtained (it being understood that there

shall be no requirement to obtain such consent, approval, license or authorization), in each case to the extent the applicable prohibition or requirement for consent is not rendered ineffective pursuant to applicable provisions of the UCC or other applicable law and was not created in contemplation of the grant of security hereunder, (h) any margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and (i) any particular assets if, and for so long as, in each case, agreed by the Administrative Agent, the cost of creating or perfecting such pledges or security interests in such assets exceed the practical benefits to be obtained by the Secured Parties therefrom; provided, however, that Excluded Assets shall not include any Proceeds of property described in clauses (a) through (i) above (unless such Proceeds are also described in such clauses). Notwithstanding the foregoing, no asset included in the Borrowing Base as reflected in the most recent Borrowing Base Certificate delivered to the Administrative Agent shall constitute an “Excluded Asset”.

“Existing Issuers” has the meaning specified therefor in the definition of the term “Pledged Shares.”

“Goodwill” means the goodwill connected with a Person’s business including, without limitation, (i) all goodwill connected with the use of and symbolized by any of the other Intellectual Property in which such Person has any interest, (ii) all know-how, trade secrets, customer and supplier lists, technology, proprietary information, inventions (whether or not patentable), methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any Person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill, and (iii) all product lines of such Person’s business.

“Intellectual Property” means any and all Patents, Copyrights, Licenses, Trade Secrets, Trademarks and Goodwill.

“Intellectual Property Security Agreement” means any agreement executed on or after the Closing Date in accordance with the Credit Agreement and this Agreement confirming or effecting the grant of any Lien on Patents, Trademarks and/or Copyrights owned by any Grantor, substantially in the form of Exhibit B hereto.

“Licenses” means, with respect to any Person (the **“Specified Party”**), (i) any licenses, distribution agreements or other similar rights provided to the Specified Party in or with respect to Intellectual Property owned or controlled by any other Person, and (ii) any licenses or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by the Specified Party, in each case, including (A) any software license agreements (other than license agreements for commercially available off-the-shelf software that is generally available to the public which have been licensed to a Grantor pursuant to end-user licenses), (B) the license agreements listed on Schedule III hereto, and (C) the right to use any of the licenses or other similar rights described in this definition in connection with the enforcement of the Administrative Agent’s and the Term Loan Lenders’ rights under the Loan Documents.

“Patents” means patents and patent applications (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), including the patents and patent applications listed on Schedule IV hereto, together with any and all (i) rights and privileges arising under applicable Law with respect to use of any patents, (ii) inventions and improvements described and claimed therein, (iii) continuations, divisionals, continuations-in-part, extensions, re-examinations, reissues, and renewals thereof and improvements thereon, (iv) income, fees, royalties, damages, claims and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (v) the right to sue for past, present, and future infringements thereof, and (vi) rights corresponding thereto throughout the world.

“Pledged Debt” means the indebtedness described in Schedule X hereto and all indebtedness from time to time owned or acquired by a Grantor, the promissory notes and other Instruments evidencing any or all of such indebtedness, and all interest, cash, Instruments, Investment Property, financial assets, securities, Equity Interests, other equity interests, stock options and commodity

contracts, notes, debentures, bonds, promissory notes or other evidences of indebtedness and all other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness.

“**Pledged Interests**” means, collectively, (a) the Pledged Debt, (b) the Pledged Shares and (c) all security entitlements in any and all of the foregoing.

“**Pledged Issuer**” has the meaning specified therefor in the definition of the term “Pledged Shares.”

“**Pledged Shares**” means (a) the shares of Equity Interests described in Schedule XI hereto, whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, issued by the Persons described in such Schedule XI (the “**Existing Issuers**”), (b) the shares of Equity Interests at any time and from time to time acquired by a Grantor of any and all Persons now or hereafter existing (such Persons, together with the Existing Issuers, being hereinafter referred to collectively as the “**Pledged Issuers**” and each individually as a “**Pledged Issuer**”), whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, and (c) the certificates representing such shares of Equity Interests, all options and other rights, contractual or otherwise, in respect thereof and all dividends, distributions, cash, Instruments, Investment Property, financial assets, securities, Equity Interests, other equity interests, stock options and commodity contracts, notes, debentures, bonds, promissory notes or other evidences of indebtedness and all other property (including, without limitation, any stock dividend and any distribution in connection with a stock split) from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests.

“**Rolling Stock**” means all trucks, trailers and tractors, wherever located, owned by, and used in the ordinary course of business of, the Grantors, but excluding any such property which is being held for resale or is leased to the Grantors.

“**Secured Obligations**” has the meaning assigned to such term in Section 3 hereof.

“**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.

“**Titled Collateral**” means all Collateral for which the title to such Collateral is governed by a Certificate of Title or certificate of ownership, including, without limitation, all motor vehicles (including, without limitation, all trucks, trailers, tractors, service vehicles, automobiles and other mobile equipment) for which the title to such motor vehicles is governed by a Certificate of Title or certificate of ownership.

“**Trade Secrets**” means, with respect to any Person, all of such Person’s right, title and interest in and to the following: (a) any and all confidential and proprietary information, including unpatented inventions, invention disclosures, engineering or other data, information, production procedures, know-how, financial data, customer lists, supplier lists, business and marketing plans, processes, schematics, algorithms, techniques, analyses, proposals, source code, data, databases and data collections, in each case, that constitutes a trade secret under applicable law and derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons able to obtain economic value from its disclosure or use; (b) all rights to sue for past, present or future infringements thereof, and (c) all rights corresponding to any of the foregoing throughout the world.

“**Trademarks**” means any and all trademarks, trade names, registered trademarks, trademark applications, service marks, slogans, sound marks, registered service marks, brand names, certification marks, collective marks, uniform resource locations (URL’s), domain names, logos, symbols, trade dress, assumed names, corporate names, fictitious names and service mark applications, and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country or any political subdivision thereof) including the registrations and applications listed on Schedule V hereto, together with (i) all extensions, divisions, modifications and renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) the goodwill of each Grantor’s business symbolized by the foregoing or connected therewith, (v) all rights and privileges arising under applicable Law with respect to each Grantors use of any trademarks and (v) all of each Grantor’s rights corresponding thereto throughout the world.

Section 2 Grant of Security Interest. As collateral security for the payment, performance and observance of all of the Secured Obligations, each Grantor hereby pledges and collaterally assigns to the Administrative Agent (and its agents and designees), and grants to the Administrative Agent (and its agents and designees), for the benefit of the Secured Parties, a continuing security interest in, all personal property and Fixtures of such Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind and description, tangible or intangible, including, without limitation, the following (all being collectively referred to herein as the “**Collateral**”):

(a) all Accounts;

(b) all Goods, including, without limitation, all Equipment (including Rolling Stock), Fixtures and Inventory (including work in progress and raw materials);

(c) all Chattel Paper (whether tangible or electronic);

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(d) the Commercial Tort Claims specified on Schedule IX;

(e) all Deposit Accounts, Securities Accounts, Commodities Accounts, all cash, and all other property from time to time deposited therein or otherwise credited thereto and the monies and property in the possession or under the control of the Administrative Agent or any Term Loan Lender or any affiliate, representative, agent or correspondent of the Administrative Agent or any Term Loan Lender;

(f) all Documents;

(g) all General Intangibles (including, without limitation, all Payment Intangibles);

(h) all Intellectual Property and Licenses, together with all income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof;

(i) all Instruments (including, without limitation, Promissory Notes);

(j) all Investment Property;

(k) all Letter-of-Credit Rights;

(l) all Money, cash and cash equivalents;

(m) all Pledged Interests;

(n) all Supporting Obligations;

(o) all other tangible and intangible personal property of such Grantor (whether or not subject to the UCC), including, without limitation, all bank and other accounts and all cash and all investments therein, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of such Grantor described in the preceding clauses of this Section 2 hereof (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by such Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including, without limitation, all tapes, disks, cards, Software, data and computer programs in the possession or under the control of such Grantor or any other Person from time to time acting for such Grantor that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 2 hereof or are otherwise necessary or helpful in the collection or realization thereof; and

(p) all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral;

in each case howsoever such Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

Notwithstanding anything herein to the contrary, the term "Collateral" shall not include, and no Grantor is pledging, nor granting a security interest hereunder in, any Excluded Assets; provided, however, that if and when any asset shall cease to be an Excluded Asset, a Lien on and security interest in such property shall immediately be deemed granted hereunder.

Section 3 Security for Secured Obligations. The security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether now existing or hereafter incurred (the "**Secured Obligations**");

(a) the prompt payment by each Grantor, as and when due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it in respect of (i) the Obligations, and (ii) in the case of a Guarantor, all amounts from time to time owing by such Grantor in respect of its guaranty made pursuant to Article XII of the Credit Agreement or under any other Guarantee to which it is a party, with respect to such Obligations; and

(b) the due performance and observance by each Grantor of all of its other obligations from time to time existing in respect of the Loan Documents.

Section 4 Delivery of the Pledged Interests.

(a) Subject to the terms of the Intercreditor Agreement, the Grantors shall deliver to the Administrative Agent all promissory notes currently evidencing the Pledged Debt with a face value in excess of \$100,000 individually or in the aggregate and, subject to the Post-Closing Agreement, all certificates currently representing the Pledged Shares on or prior to the execution and delivery of this Agreement. Subject to the terms of the Intercreditor Agreement, the Grantors shall deliver to the Administrative Agent all other promissory notes and Instruments with a face value in excess of \$100,000 individually or in the aggregate, and certificates constituting Pledged Interests from time to time required to be pledged to the Administrative Agent pursuant to the terms of this Agreement or the Credit Agreement (the "**Additional Collateral**") promptly upon, but in any event within five (5) Business Days of, receipt thereof by or on behalf of any of the Grantors. Subject to the terms of the Intercreditor Agreement, all such promissory notes, certificates and Instruments shall be held by or on behalf of the Administrative Agent pursuant hereto and the Grantors shall deliver all such promissory notes, certificates and Instruments required to be delivered to the Administrative Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment or undated stock powers executed in blank, all in form and substance reasonably satisfactory to the Administrative Agent. If any Pledged Interests consist of uncertificated securities, unless the last sentence of this clause (a) is applicable thereto, such Grantor shall cause each issuer of such securities to agree that it will comply with instructions originated by the Administrative Agent with respect to such securities without further consent by such Grantor and such Grantor shall not permit any issuer of such Pledged Interests to (i) enter into any agreement with any Person, other than the Administrative Agent or any holder of a Permitted Lien that is party to the Intercreditor Agreement or another intercreditor agreement acceptable to the Administrative Agent, whereby such issuer effectively delivers "control" of such partnership interest or limited liability company interest (as applicable) under the UCC to such Person, or (ii) allow such partnership interest or limited liability company interest (as applicable) to become a "security" within the meaning of Article 8 of the UCC unless such Grantor certifies such security and complies with the procedures set forth in Section 6(n). If any Pledged Interest of any Grantor is or shall become represented by an uncertificated security (as such term is defined in the UCC), such Grantor shall not consent to or permit the issuer thereof to take any action to grant "control" (within the meaning of Section 8-106 of the UCC) thereof to any person other than the Administrative Agent or Revolving Agent, as applicable. Subject to the terms of the Intercreditor Agreement, each Grantor that is an issuer of any uncertificated Pledged Interest described in this Section 4(a)(i) hereby agrees to comply with all instructions from the Administrative Agent without further consent of the registered owner thereof. Subject to the terms of the Intercreditor Agreement, if any Pledged Interests consist of security entitlements, such Grantor shall transfer such security entitlements to the Administrative Agent (or its custodian, nominee or other designee), or cause the applicable securities intermediary to agree that it will comply with entitlement orders by the Administrative Agent without further consent by such Grantor.

(i) Within five (5) Business Days of the receipt by a Grantor of any Additional Collateral, such Grantor shall deliver to the Administrative Agent a Pledge Amendment, duly executed by such Grantor, in substantially the form of Exhibit A hereto (a “**Pledge Amendment**”), in respect of the Additional Collateral that must be pledged pursuant to this Agreement and the Credit Agreement. The Pledge Amendment shall from and after delivery thereof constitute part of Schedules X and XI hereto, as applicable. Each Grantor hereby authorizes the Administrative Agent to attach each Pledge Amendment to this Agreement and agrees that all promissory notes, certificates or Instruments listed on any Pledge Amendment delivered to the Administrative Agent shall for all purposes hereunder constitute Pledged Interests and such Grantor shall be deemed upon delivery thereof to have made the representations and warranties set forth in Section 5 hereof with respect to such Additional Collateral.

(b) If any Grantor shall receive, by virtue of such Grantor’s being or having been an owner of any Pledged Interests, any (i) stock certificate (including, without limitation, any certificate representing a stock dividend or distribution in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares, stock split, spin-off or split-off), promissory note or other Instrument, (ii) option or right, whether as an addition to, substitution for, or in exchange for, any Pledged Interests, or otherwise, (iii) dividends or distributions payable in cash (except such dividends and/or distributions permitted to be retained by any such Grantor pursuant to Section 7 hereof) or in securities or other property or (iv) dividends, distributions, cash, Instruments, Investment Property and other property in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in surplus, such Grantor shall receive such stock certificate, promissory note, Instrument, option, right, payment or distribution in trust for the benefit of the Administrative Agent and the Revolving Agent, shall segregate it from such Grantor’s other property and, subject to the terms of the Intercreditor Agreement, shall deliver it forthwith to the Administrative Agent, in the exact form received, with any necessary endorsement and/or appropriate stock powers duly executed in blank, to be held by the Administrative Agent as Pledged Interests and as further collateral security for the Secured Obligations.

(c) The Grantors agree that the pledge of the shares of Equity Interests of any Pledged Issuer who is a Foreign Subsidiary may be supplemented by one or more separate pledge agreements, deeds of pledge, share charges, or other similar agreements or instruments, executed and delivered by the relevant Grantors in favor of the Administrative Agent, which pledge agreements will provide for the pledge of such shares of Equity Interests in accordance with the laws of the applicable foreign jurisdiction. With respect to such shares of Equity Interests, the Administrative Agent may, at any time and from time to time, in its sole discretion, take actions in such foreign jurisdictions that will result in the perfection of the Lien created in such shares of Equity Interests.

Section 5 Representations and Warranties. Each Grantor jointly and severally represents and warrants as follows:

(a) Schedule I hereto sets forth (i) the exact legal name of each Grantor, (ii) the state or jurisdiction of organization of each Grantor, (iii) the type of organization of each Grantor and (iv) the organizational identification number of each Grantor or states that no such organizational identification number exists.

(b) There is no pending or, to the knowledge of any Grantor, threatened action, suit, proceeding, claim or dispute before any court or other Governmental Authority or any arbitrator, or any order, judgment or award by any court or other Governmental Authority or any arbitrator, that may adversely affect the grant by any Grantor, or the perfection, of the security interest purported to be created hereby in the Collateral, or the exercise by the Administrative Agent of any of its rights or remedies hereunder.

(c) All Equipment, Fixtures, Inventory and other Goods now existing are, and all Equipment, Fixtures, Inventory and other Goods hereafter existing will be, located at the addresses specified therefor in Schedule VI hereto (as amended, supplemented or otherwise modified from time to time in accordance with Section 6(b)), except with respect to assets out for processing in the Ordinary Course of Business, in transit in the Ordinary Course of Business, items out for repair in the Ordinary Course of Business or in the possession of an employee in the Ordinary Course of Business or intended for personal use (including laptops and cell phones). Each Grantor’s chief place of business and chief executive office, the place where such Grantor keeps its Records concerning Accounts and all originals of all Chattel Paper are located at the addresses specified therefor in Schedule VI hereto (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof). None of the Accounts is evidenced by Promissory Notes or other Instruments. Set forth in Schedule VII hereto is a complete and accurate list, as of the date of this Agreement, of each Deposit Account, Securities Account and Commodities Account of each Grantor, together with the name and address of each institution at which each such Account is maintained, the account number for each such Account and a description of the purpose of each such Account. Set forth in Schedule V hereto is (i) a complete and correct list of each trade name used by each Grantor and (ii) the name of, and each

trade name used by, each Person from which such Grantor has acquired any substantial part of the Collateral within five years of the date hereof.

(d) As of the Closing Date, (i) Schedule II provides a complete and correct list of all registered Copyrights owned by any Grantor, all applications for registration of Copyrights owned by any Grantor, and all other Copyrights owned by any Grantor and material to the conduct of the business of any Grantor; (ii) Schedule III provides a complete and correct list of all material Licenses entered into by any Grantor; (iii) Schedule IV provides a complete and correct list of all Patents owned by any Grantor and all applications for Patents owned by any Grantor; and (iv) Schedule V provides a complete and correct list of all registered Trademarks owned by any Grantor, all applications for registration of Trademarks owned by any Grantor, and all other Trademarks owned by any Grantor and material to the conduct of the business of any Grantor.

(e) (A) To the knowledge of each Grantor, such Grantor owns, or holds licenses in, or otherwise possesses legally enforceable rights in, all Intellectual Property that is reasonably necessary to the operation of its business as currently conducted, or (B) each Grantor is the sole and exclusive owner or valid licensee of Intellectual Property (free and clear of any Liens) used by it and, except for Intellectual Property licensed on a non-exclusive basis, has sole and exclusive rights to the use and distribution therefor or the material covered thereby in connection with the services or products in respect of which such Intellectual Property are currently being used, sold, licensed or distributed.

(i) No claims with respect to the Intellectual Property rights of any Grantor are pending or, to the knowledge of any Grantor, threatened against any Grantor or, to the knowledge of any Grantor, any other Person, (i) alleging that the manufacture, sale, licensing or use of any Intellectual Property as now manufactured, sold, licensed or used by any Grantor or any third party infringes on, or misappropriates or otherwise violates any intellectual property rights of any third party, (ii) against the use by any Grantor or any third party of any Intellectual Property or technology, know-how or computer software or (iii) challenging the ownership by any Grantor, or the validity or effectiveness, of any such Intellectual Property.

(f) No Grantor has infringed on, or misappropriated or violated, any intellectual property rights of any third party and none of the Intellectual Property rights of any Grantor infringes on, or misappropriates or otherwise violates, any intellectual property rights of any third party. No Grantor is aware of any third party claim that any of its Intellectual Property is invalid or unenforceable, challenging such Grantor's rights to such Intellectual Property or any valid basis for such claims.

(g) All registered Copyrights, registered Trademarks, and issued Patents that are owned by such Grantor and necessary to the conduct of its business are valid, subsisting and enforceable and have at all times been in compliance in all material respects with all laws, rules, regulations, and orders of any Governmental Authority applicable thereto.

(h) Each Grantor has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all Trade Secrets owned by such Grantor that are necessary in the business of such Grantor.

(i) Other than software which by the terms of its own license explicitly permits the licensee to distribute the software together with other commercial programs with no restrictions on such Grantor's ability to charge fees for such distribution and with no restriction on such Grantor's right to receive payments for transfer of its Intellectual Property, no open source or public library software, including any version of any software licensed pursuant to any GNU public license, is, in whole or in part, embodied or incorporated, in any manner, in any Grantor's software products that are licensed or distributed by any Grantor. No open source or public library software licensed pursuant to any GNU public license which requires any Grantor to license such Grantor's software products to third parties, or any other license which requires any Grantor to license such Grantor's software products to third parties, is embodied or incorporated, in any manner, in any Grantor's source code.

(j) The Existing Issuers set forth in Schedule XI identified as a Subsidiary of a Grantor are each such Grantor's only Subsidiaries existing on the date hereof. The Pledged Shares have been duly authorized and validly issued and, to the extent applicable,

are fully paid and nonassessable and the holders thereof are not entitled to any preemptive, first refusal or other similar rights except as set forth on Schedule XI hereto. Except as noted in Schedule XI hereto, the Pledged Shares constitute 100% of the issued shares of Equity Interests of the Pledged Issuers as of the date hereof. All other shares of Equity Interests constituting Pledged Interests will be duly authorized and validly issued and, to the extent applicable, fully paid and nonassessable.

(k) The promissory notes currently evidencing the Pledged Debt, if any, have been, and all other promissory notes from time to time evidencing Pledged Debt, when executed and delivered, to the applicable Grantor's knowledge, will have been, duly authorized, executed and delivered by the respective makers thereof, and all such promissory notes are or will be, as the case may be, legal, valid and binding obligations of such makers, enforceable against such makers in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(l) The Grantors are and will be at all times the sole and exclusive owners of, or otherwise have and will have adequate rights in, the Collateral free and clear of any Lien except for the Permitted Liens. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording or filing office except such as may have been filed to perfect or protect any Permitted Lien, other than those that will be released on the Closing Date.

(m) The exercise by the Administrative Agent of any of its rights and remedies hereunder will not contravene any law or any contractual restriction binding on or otherwise affecting any Grantor or any of its properties and will not result in, or require the creation of, any Lien upon or with respect to any of its properties (other than as set forth in this Agreement).

(n) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person, is required for (i) the due execution, delivery and performance by any Grantor of this Agreement, (ii) the grant by any Grantor of the security interest purported to be created hereby in the Collateral or (iii) the exercise by the Administrative Agent of any of its rights and remedies hereunder, except, in the case of this clause (iii), as may be required in connection with any sale of any Pledged Interests by laws affecting the offering and sale of securities generally, or, in each case, as required under the UCC. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person, is required for the perfection of the security interest purported to be created hereby in the Collateral in the United States, except (A) for the filing under the UCC as in effect in the applicable jurisdiction of the financing statements described in Schedule VIII hereto, all of which financing statements have been duly filed and are in full force and effect, (B) with respect to the perfection of the security interest created hereby in the United States Intellectual Property and Licenses, for the recording of the appropriate Grant of a Security Interest, substantially in the form of Exhibit B hereto in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, (C) with respect to the perfection of the security interest created hereby in Titled Collateral, for the submission of an appropriate application requesting that the Lien of the Administrative Agent be noted on the Certificate of Title or certificate of ownership, completed and authenticated by the applicable Grantor, together with the Certificate of Title or certificate of ownership, with respect to such Titled Collateral, to the appropriate Governmental Authority, (D) with respect to any action that may be necessary to obtain control of Collateral constituting Deposit Accounts, Securities Accounts, Commodities Accounts, Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights, the taking of such actions, and (E) the Administrative Agent's having possession of all Documents, Chattel Paper, Instruments and cash constituting Collateral (subclauses (A), (B), (C), (D), and (E), each a "**Perfection Requirement**" and collectively, the "**Perfection Requirements**").

(o) This Agreement creates a legal, valid and enforceable security interest in favor of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral, as security for the Secured Obligations. The compliance with the Perfection Requirements will result in the perfection of such security interests. Such security interests are, or in the case of Collateral in which any Grantor obtains rights after the date hereof, will be, perfected, first priority security interests to the extent required under this Agreement, subject in priority only to the Permitted Liens that, pursuant to the definition of the term "Permitted Liens," are not prohibited from being prior to the Liens in favor of the Administrative Agent, for the benefit of the Secured Parties, and the recording of such instruments of assignment described above. Such Perfection Requirements and all other action necessary or desirable to perfect and protect such security interest have been duly made or taken, except for (i) the Administrative Agent's having possession of all Instruments, Documents, Chattel Paper and cash constituting Collateral after the date hereof, (ii) the Administrative Agent's having control of all Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights constituting Collateral after the date hereof, (iii) the submission of an appropriate application requesting that the Lien of the Administrative Agent be noted on the Certificate of Title or certificate of ownership, completed and authenticated by the applicable Grantor, together with the Certificate of Title or certificate of ownership, with respect to such Titled Collateral and (iv) the other filings and recordations and actions described in Section 5(n) hereof.

(p) As of the date hereof, no Grantor holds any Commercial Tort Claims or is aware of any such pending claims, except for such claims described in Schedule IX.

(q) (i) With respect to each Grantor and its Subsidiaries that is a partnership or a limited liability company and whose partnership interests or membership interests, as applicable, are evidenced by a certificate, each such Person has irrevocably opted into (and has caused each of its Subsidiaries that is a partnership or a limited liability company, and a Pledged Issuer to opt into) Article 8 of the UCC (collectively, the “**Certificated Entities**”). Such interests are securities for purposes of Article 8 of any relevant UCC. (ii) With respect to each Grantor and its Subsidiaries that is a partnership or a limited liability company and is not a Certificated Entity, the partnership interests or membership interests of each such Person is not (A) dealt in or traded on securities exchanges or in securities markets, (B) securities for purposes of Article 8 of any relevant UCC, (C) investment company securities within the meaning of Section 8-103 of any relevant UCC and (D) evidenced by a certificate. Such partnership interests or membership interests constitute General Intangibles.

(r) With respect to each Grantor’s Credit Card Receivables included in any Borrowing Base Certificate as being Eligible Credit Card Receivables (except as disclosed therein (specifically or by exclusion of any such Credit Card Receivable from the Borrowing Base)), all such Credit Card Receivables are Eligible Credit Card Receivables as of the date of such Borrowing Base Certificate. In addition, with respect to all of its Credit Card Receivables included in any Borrowing Base Certificate as being Eligible Credit Card Receivables, except as disclosed in writing to the Administrative Agent (specifically or by exclusion of any such Credit Card Receivable from the Borrowing Base), (A) the amounts shown on all invoices, statements and the most recent Borrowing Base Certificate with respect thereto are owing to such Grantor as indicated thereon and are not in any way contingent and (B) payments that have been made thereon have been promptly delivered to a Controlled Deposit Account to the extent required pursuant to Section 4.04 of the Credit Agreement.

Section 6 Covenants as to the Collateral. So long as any of the Secured Obligations (whether or not due) shall remain unpaid (other than contingent obligations for which no claim has been asserted), unless the Administrative Agent shall otherwise consent in writing:

(a) Further Assurances. Each Grantor will at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that may be necessary or that the Administrative Agent may reasonably request in order (i) to, subject to the Intercreditor Agreement and except as otherwise permitted by this Agreement, perfect and protect, or maintain the perfection of, the security interest and Lien purported to be created hereby (including with respect to jurisdictions outside of the United States of America, any state thereof and the District of Columbia, to the extent reasonably requested by the Administrative Agent), and to take commercially reasonable efforts to defend the security interest of the Administrative Agent in the Collateral and the priority thereof against any Lien not expressly permitted hereunder or under the Credit Agreement or other Loan Documents; (ii) to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) to otherwise to effect the purposes of this Agreement, including, without limitation: (A) marking conspicuously all Chattel Paper and Instruments with a face value in excess of \$100,000 individually or in the aggregate, Licenses and, at the request of the Administrative Agent, all of its Records pertaining to the Collateral with a legend, in form and substance reasonably satisfactory to the Administrative Agent, indicating that such Chattel Paper, Instrument, License or Collateral is subject to the security interest created hereby, (B) if any Account shall be evidenced by a Promissory Note or other Instrument or Chattel Paper with a face value in excess of \$100,000 individually or in the aggregate, subject to the Intercreditor Agreement, delivering and pledging to the Administrative Agent such Promissory Note, other Instrument or Chattel Paper, duly endorsed and accompanied by executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Administrative Agent, (C) executing and filing (to the extent, if any, that such Grantor’s signature is required thereon) or authenticating the filing of, such financing or continuation statements, or amendments thereto, (D) with respect to United States pending or registered Intellectual Property hereafter existing and not covered by an appropriate security interest grant, the executing and recording in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, appropriate instruments granting a security interest, as may be necessary or desirable or that the Administrative Agent may request in order to perfect and preserve the security interest purported to be created hereby, (E) delivering to the Administrative Agent irrevocable proxies in respect of the Pledged Interests, (F) furnishing to the Administrative Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Administrative Agent may reasonably request, all in reasonable detail, (G) if at any time after the date hereof, any Grantor acquires or holds any Commercial Tort Claim which exceeds \$100,000, promptly notifying the Administrative Agent in a writing signed

by such Grantor setting forth a brief description of such Commercial Tort Claim and granting to the Administrative Agent a security interest therein and in the proceeds thereof, which writing shall incorporate the provisions hereof and shall be in form and substance reasonably satisfactory to the Administrative Agent, (H) upon the acquisition after the date hereof by any Grantor of any Titled Collateral (other than Equipment that is subject to a purchase money security interest permitted by Section 8.02(i) of the Credit Agreement), immediately notifying the Administrative Agent of such acquisition, setting forth a description of the Titled Collateral acquired and a good faith estimate of the current value of such Titled Collateral, and if so requested by the Administrative Agent, immediately causing the Administrative Agent to be listed as the lienholder on such Certificate of Title or certificate of ownership and delivering evidence of the same to the Administrative Agent, and (I) taking all actions required by law in any relevant UCC jurisdiction, or by other law as applicable in any foreign jurisdiction. No Grantor shall take or fail to take any action which would in any manner impair the validity or enforceability of the Administrative Agent's security interest in and Lien on any Collateral.

(b) Location of Equipment and Inventory. Each Grantor will keep the Equipment and Inventory (other than Equipment and Inventory sold in the Ordinary Course of Business in accordance with Section 6(h) hereof, Inventory out for processing in the Ordinary Course of Business, in transit in the Ordinary Course of Business, out for repair in the Ordinary Course of Business, in the possession of an employee in the Ordinary Course of Business or intended for personal use (including laptops and cell phones)) at the locations specified in Schedule VI hereto or, upon not less than thirty (30) days' prior written notice to the Administrative Agent accompanied by a new Schedule VI hereto indicating each new location of the Equipment and Inventory, at such other locations in the continental United States as the Grantors may elect (or other locations approved by the Administrative Agent in writing); provided that (i) all action has been taken to grant to the Administrative Agent a perfected, first priority security interest in such Equipment and Inventory (subject in priority only to Permitted Liens identified in clauses (c), (d), (i), (j), (n) and (o) of Section 8.02 of the Credit Agreement), and (ii) the Administrative Agent's rights in such Equipment and Inventory, including, without limitation, the existence, perfection and priority of the security interest created hereby in such Equipment and Inventory, are not adversely affected thereby.

(c) Condition of Equipment. Each Grantor will maintain or cause the Equipment which is necessary or useful in the proper conduct of its business to be maintained and preserved in good condition, repair and working order, ordinary wear and tear excepted, and will forthwith, or in the case of any loss or damage to any Equipment promptly after the occurrence thereof, make or cause to be made all repairs, replacements and other improvements in connection therewith which are necessary or desirable, consistent with past practice, or which the Administrative Agent may reasonably request to such end. Each Grantor will promptly furnish to the Administrative Agent a statement describing in reasonable detail any loss or damage in excess of \$250,000 individually or in the aggregate to any Equipment.

(d) Taxes, Etc. Each Grantor jointly and severally agrees to pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Equipment and Inventory, except to the extent otherwise provided in the Credit Agreement.

(e) Insurance. Each Grantor will, at its own expense, maintain insurance with respect to the Collateral in accordance with the terms of the Credit Agreement. Each Grantor will, if so requested by the Administrative Agent, deliver to the Administrative Agent original or duplicate insurance policies and, as often as the Administrative Agent may reasonably request, a report of a reputable insurance broker with respect to such insurance. Each Grantor will also, at the request of the Administrative Agent, execute and deliver instruments of assignment of such insurance policies and cause the respective insurers to acknowledge notice of such assignment.

(f) Provisions Concerning the Accounts and the Licenses.

(i) Each Grantor will, except as otherwise provided in this subsection (f), continue to collect, at its own expense, all amounts due or to become due under the Accounts. In connection with such collections, each Grantor may (and, if an Event of Default has occurred and is continuing, at the Administrative Agent's direction, will) take such action as such Grantor (or, if applicable, the Administrative Agent) may deem necessary or advisable to enforce collection or performance of the Accounts; provided, however, that the Administrative Agent shall have the right at any time, upon the occurrence and during the continuance of an Event of Default, to notify the Account Debtors or obligors under any Accounts of the assignment of such Accounts to the Administrative Agent and to direct such Account Debtors or obligors to make payment of all amounts due or to become due to such Grantor thereunder directly to the Administrative Agent or its designated agent and, upon such notification and at the expense of such Grantor and to the extent permitted by law, to enforce collection of any such Accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have

done. After receipt by any Grantor of a notice from the Administrative Agent that the Administrative Agent has notified, intends to notify, or has enforced or intends to enforce a Grantor's rights against the Account Debtors or obligors under any Accounts as referred to in the proviso to the immediately preceding sentence, all amounts and proceeds (including Instruments) received by such Grantor in respect of the Accounts shall be received in trust for the benefit of the Administrative Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Administrative Agent or its designated agent in the same form as so received (with any necessary endorsement) to be held as cash collateral and applied as specified in Section 9(d) hereof. In addition, upon the occurrence and during the continuance of an Event of Default, other than in the ordinary course of business consistent with its past practice and in amounts which are not material to such Grantor, such Grantor will not (i) grant any extension of the time for payment of any Account, (ii) compromise or settle any Account for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Account, (iv) allow any credit or discount whatsoever on any Account or (v) amend, supplement or modify any Account in any manner that could adversely affect the value thereof.

(ii) Upon the occurrence and during the continuance of any breach or default under any material License by any party thereto other than a Grantor, (A) the relevant Grantor will, promptly after obtaining knowledge thereof, give the Administrative Agent written notice of the nature and duration thereof, specifying what action, if any, it has taken and proposes to take with respect thereto, (B) if an Event of Default has occurred and is continuing, no Grantor will, without the prior written consent of the Administrative Agent, declare or waive any such breach or default or affirmatively consent to the cure thereof or exercise any of its remedies in respect thereof, and (C) each Grantor will, upon written instructions from the Administrative Agent and at such Grantor's expense, take such action as the Administrative Agent may deem reasonably necessary or advisable in respect thereof.

(iii) Each Grantor will, at its expense, promptly deliver to the Administrative Agent a copy of each notice or other communication received by it by which any other party to any material License (A) declares a breach or default by a Grantor of any material term thereunder, (B) terminates such License or (C) purports to exercise any of its rights or affect any of its obligations thereunder, together with a copy of any reply by such Grantor thereto.

(iv) Each Grantor will exercise promptly and diligently each and every right which it may have under each License (other than any right of termination) that is necessary in the conduct of such Grantor's business and will duly perform and observe in all respects all of its obligations under each such License and will take all action necessary to maintain such Licenses in full force and effect. No Grantor will, without the prior written consent of the Administrative Agent, cancel, terminate, amend or otherwise modify in any respect, or waive any provision of, any License that is necessary in the conduct of such Grantor's business.

(g) Provisions Concerning the Pledged Interests. Each Grantor will

(i) at the Grantors' joint and several expense, promptly deliver to the Administrative Agent a copy of each material notice or other communication received by it in respect of the Pledged Interests;

(ii) at the Grantors' joint and several expense, defend the Administrative Agent's right, title and security interest in and to the Pledged Interests against the claims of any Person;

(iii) not make or consent to any amendment or other modification or waiver with respect to any Pledged Interests or enter into any agreement or permit to exist any restriction with respect to any Pledged Interests (other than as permitted under the Loan Documents); and

(iv) not vote the Pledged Interests to approve or permit the issuance of (A) any additional shares of any class of Equity Interests of any Pledged Issuer, except to the extent required by the Organizational Documents of the Borrower and not prohibited by the Credit Agreement, (B) any securities convertible voluntarily by the holder thereof or automatically upon the occurrence or non-occurrence of any event or condition into, or exchangeable for, any such shares of Equity Interests or (C) any warrants, options, contracts or other commitments entitling any Person to purchase or otherwise acquire any such shares of Equity Interests.

(h) Transfers and Other Liens.

(i) Except to the extent expressly permitted by Section 8.05 of the Credit Agreement, no Grantor will sell, assign (by operation of law or otherwise), lease, license, exchange or otherwise transfer or dispose of any of the Collateral.

(ii) Except to the extent expressly permitted by Section 8.02 of the Credit Agreement, no Grantor will create, suffer to exist or grant any Lien upon or with respect to any Collateral.

(i) Intellectual Property.

(i) Upon the request of the Administrative Agent, in order to facilitate filings with the United States Patent and Trademark Office and the United States Copyright Office, each Grantor shall execute and deliver to the Administrative Agent one or more Intellectual Property Security Agreements to further evidence the Administrative Agent's Lien on such Grantor's Patents, Trademarks, or Copyrights, and the General Intangibles of such Grantor relating thereto or represented thereby.

(ii) Each Grantor shall promptly notify the Administrative Agent of any infringement, misappropriation, or dilution of such Grantor's Intellectual Property or if any application for or registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office or the United States Copyright Office has become abandoned or dedicated to the public, or of any determination by a Governmental Authority (including the determination by the United States Patent and Trademark Office, the United States Copyright Office, or any court) abandoning such Grantor's ownership of any such Patent, Trademark or Copyright, its right to register the same, except, in each case, to the extent such abandonment or dedication to the public is permitted by Section 8.05(f)(ii) of the Credit Agreement, or to keep and maintain the same, and shall have the duty, with respect to Intellectual Property that is necessary in the conduct of such Grantor's business, to protect and diligently enforce and defend at such Grantor's expense such Intellectual Property, including (A) to diligently enforce and defend, including promptly suing for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and filing for opposition, interference, and cancellation against conflicting Intellectual Property rights of any Person, (B) to prosecute diligently any such trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement, (C) to prosecute diligently any such patent application that is part of the Patents pending as of the date hereof or hereafter until the termination of this Agreement, (D) to take all reasonable and necessary action to preserve and maintain all of such Grantor's Trademarks, Trade Secrets, Patents, Copyrights, Licenses, and its rights therein, including paying all maintenance fees and filing of applications for renewal, affidavits of use, and affidavits of noncontestability, and (E) to require all employees, consultants, and contractors of each Grantor who were involved in the creation or development of such Intellectual Property to sign agreements containing assignment of Intellectual Property rights and obligations of confidentiality. Each Grantor further agrees not to abandon any Intellectual Property or Intellectual Property License that is necessary in the conduct of such Grantor's business. Each Grantor hereby agrees to take the steps described in this Section 6(i)(ii) with respect to all new or acquired Intellectual Property to which it or any of its Subsidiaries is now or later becomes entitled that is necessary in the conduct of such Grantor's business.

(iii) Grantors acknowledge and agree that the Secured Parties shall have no duties with respect to any Intellectual Property or Licenses of any Grantor. Without limiting the generality of this Section 6(i)(iii), Grantors acknowledge and agree that no Secured Party shall be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Licenses against any other Person, but any Secured Party may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all expenses incurred in connection therewith (including reasonable and documented out-of-pocket fees and expenses of attorneys and other professionals) shall be for the sole account of Borrowers and shall be chargeable to the Loan Account.

(iv) Each Grantor shall promptly file an application with the United States Copyright Office for any Copyright that has not been registered with the United States Copyright Office if such Copyright is necessary in connection with the conduct of such Grantor's business. Any expenses incurred in connection with the foregoing shall be borne by the Grantors.

(v) On each date on which financial statements are delivered by Borrowers pursuant to Section 7.01 of the Credit Agreement, each Grantor shall provide the Administrative Agent with a written report of all new Patents or Trademarks that are registered or the subject of pending applications for registrations, and of all Licenses that are material to the conduct of such Grantor's business, in each case, which were acquired, registered, or for which applications for registration were filed by any Grantor during the prior period and any statement of use or amendment to allege use with respect to intent-to-use trademark applications. In the case of such registrations or applications therefor which were acquired by any Grantor, each such Grantor shall file the necessary documents with the appropriate Governmental Authority identifying the applicable Grantor as the owner (or as a co-owner thereof, if such is the case) of such Intellectual Property. In each of the foregoing cases, the applicable Grantor shall promptly cause to be prepared, executed, and delivered to the Administrative Agent on each date on which financial statements are delivered by Borrowers pursuant to Section 7.01 of the Credit Agreement supplemental schedules to the applicable Loan Documents to identify such Patent and Trademark registrations and applications therefor (with the exception of Trademark applications filed on an intent-to-use basis for which no statement of use or amendment to allege use has been filed) and Licenses as being subject to the security interests created thereunder.

(vi) Anything to the contrary in this Agreement notwithstanding, in no event shall any Grantor, either itself or through any agent, employee, licensee, or designee, file an application for the registration of any Copyright with the United States Copyright Office or any similar office or agency in another country without giving the Administrative Agent written notice thereof at least three (3) Business Days prior to such filing and complying with Section 6(i)(i). Upon receipt from the United States Copyright Office of notice of registration of any Copyright, each Grantor shall promptly (but in no event later than five (5) Business Days following such receipt) notify (but without duplication of any notice required by Section 6(i)(v)) the Administrative Agent of such registration by delivering, or causing to be delivered, to the Administrative Agent, documentation sufficient for the Administrative Agent to perfect the Administrative Agent's Liens on such Copyright. If any Grantor acquires from any Person any Copyright registered with the United States Copyright Office or an application to register any Copyright with the United States Copyright Office, such Grantor shall promptly (but in no event later than ten (10) Business Days following such acquisition) notify the Administrative Agent of such acquisition and deliver, or cause to be delivered, to the Administrative Agent, documentation sufficient for the Administrative Agent to perfect the Administrative Agent's Liens on such Copyright. In the case of such Copyright registrations or applications therefor which were acquired by any Grantor, each such Grantor shall promptly (but in no event later than ten (10) Business Days following such acquisition) file the necessary documents with the appropriate Governmental Authority identifying the applicable Grantor as the owner (or as a co-owner thereof, if such is the case) of such Copyrights.

(vii) Each Grantor shall take reasonable steps to maintain the confidentiality of, and otherwise protect and enforce its rights in, and the validity or enforceability of, the Intellectual Property that is necessary in the conduct of such Grantor's business, including, as applicable (A) maintaining and pursuing each such application for, and obtaining and maintain the registration of each such Patent, Trademark and Copyright (now or hereafter existing) (including, as applicable, by filing applications for renewal, affidavits of use, affidavits of noncontestability and initiating opposition and interference and cancellation proceedings against third parties), (B) protecting the secrecy and confidentiality of such confidential information and trade secrets by having and enforcing a policy requiring all current employees, consultants, licensees, vendors and contractors with access to such information to execute appropriate confidentiality agreements; (C) taking actions reasonably necessary to ensure that no such trade secret falls into the public domain; and (D) protecting the secrecy and confidentiality of the source code of all such software programs and applications of which it is the owner or licensee by having and enforcing a policy requiring any licensees (or sublicensees) of such source code to enter into license agreements with commercially reasonable use and non-disclosure restrictions.

(viii) No Grantor shall enter into any Intellectual Property License to receive any license or rights in any Intellectual Property of any other Person unless such Grantor has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such Intellectual Property License (and all rights of Grantor thereunder) to the Administrative Agent (and any transferees thereof). In addition, at any time when an Event of Default exists and is continuing, following the written request of the Administrative Agent, each Grantor will (i) use its commercially reasonable efforts to obtain all consents and approvals necessary for the assignment for the benefit of the Administrative Agent of any License held by such Grantor in the United States to enable the Administrative Agent to lawfully enforce the security interests granted hereunder and (ii) to the extent required pursuant to any material License in the United States under which such Grantor is the licensee, deliver to the

licensor thereunder any notice of the grant of security interest hereunder or such other notices required to be delivered thereunder in order to permit the security interest created or permitted to be created hereunder pursuant to the terms of such License.

(ix) Without limiting any of the foregoing, if any Grantor shall at any time after the Closing Date, obtain any ownership or licensee rights in, to or under any additional Intellectual Property constituting Collateral, then the provisions of this Agreement shall automatically apply thereto and any such Intellectual Property shall automatically be deemed Collateral and shall be subject to the security interest created by this Agreement, without further action by any party.

(j) Deposit, Commodities and Securities Accounts. Subject to the Post-Closing Agreement, on or prior to the date hereof, each Grantor shall cause each bank and other financial institution with an account referred to in Schedule VII hereto (other than Excluded Deposit Accounts) to execute and deliver to the Administrative Agent (or its designee) a Control Agreement, duly executed by such Grantor and such bank or financial institution, or enter into other arrangements in form and substance satisfactory to the Administrative Agent, pursuant to which such institution shall irrevocably agree, among other things, that (i) it will, subject to the Intercreditor Agreement or the applicable Control Agreement, comply at any time with the instructions originated by the Administrative Agent (or its designee) to such bank or financial institution directing the disposition of cash, Commodity Contracts, securities, Investment Property and other items from time to time credited to such account, without further consent of such Grantor, which instructions the Administrative Agent (or its designee) will not give to such bank or other financial institution in the absence of a continuing Event of Default, (ii) all cash, Commodity Contracts, securities, Investment Property and other items of such Grantor deposited with such institution shall be subject to a perfected, first priority security interest (subject to the Intercreditor Agreement) in favor of the Administrative Agent (or its designee), (iii) any right of set off, banker's Lien or other similar Lien, security interest or encumbrance shall be fully waived or subordinated as against the Administrative Agent (or its designee), and (iv) upon receipt of written notice from the Administrative Agent during the continuance of an Event of Default, subject to the Intercreditor Agreement or the applicable Control Agreement, such bank or financial institution shall immediately send to the Administrative Agent (or its designee) by wire transfer (to such account as the Administrative Agent (or its designee) shall specify, or in such other manner as the Administrative Agent (or its designee) shall direct) all such cash, the value of any Commodity Contracts, securities, Investment Property and other items held by it. Without the prior written consent of the Administrative Agent, no Grantor shall make or maintain any Deposit Account, Commodity Account or Securities Account except for the accounts set forth in Schedule VII hereto. The provisions of this Section 6(j) shall not apply to Excluded Deposit Accounts. Upon the occurrence and during the continuance of a Dominion Trigger Period, the Administrative Agent may (in its sole and absolute discretion) direct any or all of the banks and financial institutions party to a Control Agreement to send immediately to the Administrative Agent or its designated agent by wire transfer (to such account as the Administrative Agent shall specify, or in such other manner as the Administrative Agent shall direct) all or a portion of such securities, cash, investments and other items held by such institution. Subject to the Intercreditor Agreement, any such securities, cash, investments and other items so received by the Administrative Agent or its designated agent shall (in the sole and absolute discretion of the Administrative Agent) be held as additional Collateral for the Obligations. This Section 6(j) shall in no way limit the provisions of Section 4.04 of the Credit Agreement.

(k) Titled Collateral. As of the Closing Date, no Grantor owns any Titled Collateral, except as set forth on Schedule XII. If any Grantor shall at any time acquire any Titled Collateral after the Closing Date, such Grantor shall promptly notify the Administrative Agent thereof. At the request of the Administrative Agent, the Grantors shall (i) cause all Titled Collateral which under applicable law is required to be registered, to be properly registered in the name of such Grantor, (ii) cause all Titled Collateral, to be properly titled in the name of such Grantor, and if requested by the Administrative Agent, with the Administrative Agent's Lien noted thereon and (iii) if requested by the Administrative Agent and subject to the Intercreditor Agreement, promptly deliver to the Administrative Agent (or its custodian) originals of all such Certificates of Title or certificates of ownership for such Titled Collateral, with the Administrative Agent's Lien noted thereon, and take such other actions as may be reasonably required by the Administrative Agent.

(l) Control. Each Grantor hereby agrees to take any or all action that may be necessary or that the Administrative Agent may request in order for the Administrative Agent to obtain control in accordance with the UCC with respect to the following Collateral: (i) Deposit Accounts and Securities Accounts, (ii) Electronic Chattel Paper, (iii) Investment Property and (iv) Letter-of-Credit Rights with a face value in excess of \$100,000 individually or in the aggregate. Each Grantor hereby acknowledges and agrees that any agent

or designee of the Administrative Agent shall be deemed to be a “secured party” with respect to the Collateral under the control of such agent or designee for all purposes.

(m) Records; Inspection and Reporting.

(i) Each Grantor shall keep adequate records concerning the Accounts, Chattel Paper and Pledged Interests. Each Grantor shall permit the Administrative Agent, or any agents or representatives thereof or such professionals or other Persons as the Administrative Agent may designate, upon reasonable notice and during normal business hours, (A) to examine and make copies of and abstracts from such Grantor’s books and records, (B) to visit and inspect such Grantor’s properties, (C) to verify materials, leases, notes, Accounts, Inventory and other assets of such Grantor from time to time, (D) to conduct audits, physical counts, appraisals and/or valuations, Phase I and Phase II Environmental Site Assessments or examinations at the locations of such Grantor and (E) to discuss such Grantor’s affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives, in each case as provided in and subject to the restrictions of the Credit Agreement, including, without limitation, Section 7.10 thereof.

(ii) Except as otherwise expressly permitted by Section 8.04 of the Credit Agreement, no Grantor shall, without the prior written consent of the Administrative Agent, change (A) its name, identity or organizational structure, (B) its jurisdiction of incorporation or organization as set forth in Schedule I hereto or (C) its chief executive office as set forth in Schedule VI hereto. Each Grantor shall promptly notify the Administrative Agent upon obtaining an organizational identification number, if on the date hereof such Grantor did not have such identification number.

(n) Partnership and Limited Liability Company Interest. Except with respect to partnership interests and membership interests evidenced by a certificate, which certificate has been pledged and, subject to the Intercreditor Agreement, delivered to the Administrative Agent pursuant to Section 4 hereof, no Grantor that is a partnership or a limited liability company shall, nor shall any Grantor with any Subsidiary that is a partnership or a limited liability company, permit such partnership interests or membership interests to (i) be dealt in or traded on securities exchanges or in securities markets, (ii) become a security for purposes of Article 8 of any relevant UCC, (iii) become an investment company security within the meaning of Section 8-103 of any relevant UCC or (iv) be evidenced by a certificate. Each Grantor agrees that such partnership interests or membership interests shall constitute General Intangibles.

Section 7 Voting Rights, Dividends, Etc. in Respect of the Pledged Interests.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) each Grantor may exercise any and all voting and other consensual rights pertaining to any Pledged Interests for any purpose not inconsistent with the terms of this Agreement, the Credit Agreement or the other Loan Documents; provided, however, that (A) each Grantor will give the Administrative Agent at least five (5) Business Days’ notice of the manner in which it intends to exercise, or the reasons for refraining from exercising, any such right that could reasonably be expected to adversely affect in any material respect the value, liquidity or marketability of any Collateral or the creation, perfection and priority of the Administrative Agent’s Lien; and (B) none of the Grantors will exercise or refrain from exercising any such right, as the case may be, if the Administrative Agent gives a Grantor notice that, in the Administrative Agent’s judgment, such action (or inaction) could reasonably be expected to adversely affect in any material respect the value, liquidity or marketability of any Collateral or the creation, perfection and priority of the Administrative Agent’s Lien; and

(ii) each of the Grantors may receive and retain any and all dividends, interest or other distributions paid in respect of the Pledged Interests to the extent permitted by the Credit Agreement; provided, however, that any and all (A) dividends and interest paid or payable other than in cash in respect of, and Instruments and other property received, receivable or otherwise distributed in respect of or in exchange for, any Pledged Interests, (B) dividends and other distributions paid or payable in cash in respect of any Pledged Interests in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in surplus, and (C) cash paid, payable or otherwise distributed in redemption of, or in exchange for, any Pledged Interests, together with any dividend, interest or other distribution or payment which at the time of such payment was not permitted by the Credit Agreement, shall be, and shall forthwith be delivered to the Administrative Agent, to hold as, Pledged Interests and shall, if received by any of the Grantors, be received in trust for the benefit of the Administrative Agent and the Revolving Agent, shall be segregated from the other property or funds

of the Grantors, and shall be forthwith, subject to the Intercreditor Agreement, delivered to the Administrative Agent in the exact form received with any necessary indorsement and/or appropriate stock powers duly executed in blank, to be held by the Administrative Agent as Pledged Interests and as further collateral security for the Secured Obligations; and

(iii) the Administrative Agent will execute and deliver (or cause to be executed and delivered) to a Grantor all such proxies and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and other rights which it is entitled to exercise pursuant to Section 7(a)(i) hereof and to receive the dividends, interest and/or other distributions which it is authorized to receive and retain pursuant to Section 7(a)(ii) hereof.

(b) Subject to the Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default:

(i) all rights of each Grantor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to Section 7(a)(i) hereof, and to receive the dividends, distributions, interest and other payments that it would otherwise be authorized to receive and retain pursuant to Section 7(a)(ii) hereof, shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights and to receive and hold as Pledged Interests such dividends, distributions and interest payments;

(ii) the Administrative Agent is authorized to notify each debtor with respect to the Pledged Debt to make payment directly to the Administrative Agent (or its designee) and may collect any and all moneys due or to become due to any Grantor in respect of the Pledged Debt, and each of the Grantors hereby authorizes each such debtor to make such payment directly to the Administrative Agent (or its designee) without any duty of inquiry;

(iii) without limiting the generality of the foregoing, the Administrative Agent may at its option exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Pledged Interests as if it were the absolute owner thereof, including, without limitation, the right to exchange, in its discretion, any and all of the Pledged Interests upon the merger, consolidation, reorganization, recapitalization or other adjustment of any Pledged Issuer, or upon the exercise by any Pledged Issuer of any right, privilege or option pertaining to any Pledged Interests, and, in connection therewith, to deposit and deliver any and all of the Pledged Interests with any committee, depository, transfer agent, registrar or other designated agent upon such terms and conditions as it may determine; and

(iv) all dividends, distributions, interest and other payments that are received by any of the Grantors contrary to the provisions of Section 7(b)(i) hereof shall be received in trust for the benefit of the Administrative Agent, shall be segregated from other funds of the Grantors, and shall be forthwith paid over to the Administrative Agent as Pledged Interests in the exact form received with any necessary indorsement and/or appropriate stock powers duly executed in blank, to be held by the Administrative Agent as Pledged Interests and as further collateral security for the Secured Obligations.

Section 8 Additional Provisions Concerning the Collateral.

(a) Each of the Grantors shall use commercially reasonable efforts to cause to be delivered to the Administrative Agent a Lien Waiver with respect to (i) each bailee with which such Grantor keeps Inventory or other assets as of the Closing Date with a fair market value in excess of \$100,000 and (ii) to the extent required by the Administrative Agent, each landlord which leases real property (and the accompanying facilities) to any of the Grantors as of the Closing Date. If any Grantor shall cause to be delivered Inventory or other personal property in excess of \$100,000 in fair market value to any bailee after the Closing Date, such Grantor shall use commercially reasonable efforts to cause such bailee to sign a Lien Waiver. Such requirement may be waived at the option of the Administrative Agent. If any Grantor shall lease any real property or facilities and the value of property of such Grantor located at such leased real property is in excess of \$100,000 in fair market value after the Closing Date, such Grantor shall use commercially reasonable efforts to cause the landlord in respect of such leased property or facilities to sign a Lien Waiver. Such requirement may be waived at the option of the Administrative Agent.

(b) To the maximum extent permitted by applicable law, and for the purpose of taking any action that the Administrative Agent may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, each Grantor hereby (i) authorizes the Administrative Agent to execute any such agreements, instruments or other documents in such Grantor's name and to file such agreements, instruments or other documents in such Grantor's name and in any appropriate filing office (including, without limitation, filings with the United States Patent and Trademark Office and the United States Copyright Office (including any Intellectual Property Security Agreements) for the purpose of perfecting, enforcing, maintaining or protecting the Lien of the Administrative Agent in United States issued, registered and applied for Patents, Trademarks and Copyrights (in each case, solely to the extent constituting Collateral), as applicable, and naming such Grantor as debtor and the Administrative Agent as secured party), (ii) authorizes the Administrative Agent at any time and from time to time to file, one or more financing or continuation statements and amendments thereto, relating to the Collateral (including, without limitation, any such financing statements that (A) describe the Collateral as "all assets" or "all personal property" (or words of similar effect) or that describe or identify the Collateral by type or in any other manner as the Administrative Agent may determine, regardless of whether any particular asset of such Grantor falls within the scope of Article 9 of the UCC or whether any particular asset of such Grantor constitutes part of the Collateral, and (B) contain any other information required by Part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including, without limitation, whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor) and (iii) ratifies such authorization to the extent that the Administrative Agent has filed any such financing statements, continuation statements, or amendments thereto, prior to the date hereof. A photocopy or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(c) Upon the occurrence and during the continuance of an Event of Default, in addition to all other rights and remedies available to the Administrative Agent under any other agreement, at law, in equity, or otherwise, and in all cases without any requirement that any notice be delivered to any Person (except as explicitly set forth in clause (vii) below), subject to the Intercreditor Agreement, (i) the Administrative Agent in its sole discretion shall have the right to obtain and adjust insurance required to be paid to the Administrative Agent pursuant to the Credit Agreement, (ii) the Administrative Agent in its sole discretion shall have the right to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any Collateral, (iii) the Administrative Agent in its sole discretion shall have the right to receive, endorse, and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (i) or (ii) above, (iv) the Administrative Agent shall have the sole and exclusive right to receive any and all dividends, payments or other Proceeds paid in respect of the Pledged Interests and other Investment Property and make application thereof to the Secured Obligations in the manner set forth in Section 9.03 of the Credit Agreement, (v) the Administrative Agent shall have the sole and exclusive right (but shall be under no obligation) to register any or all of the Pledged Interests and other Investment Property in the name of the Administrative Agent or its nominee, (vi) all rights of each Grantor to exercise or refrain from exercising the voting, corporate, consensual and other rights and privileges pertaining to the Pledged Interests and other Investment Property to which such Grantor would otherwise be entitled shall automatically cease and become vested in the Administrative Agent, (vii) upon concurrent notice to any Grantor, the Administrative Agent or its nominee shall have (except to the extent, if any, specifically waived in each instance by the Administrative Agent in writing in its sole discretion) the sole and exclusive right to exercise or refrain from exercising, but under no circumstances is the Administrative Agent obligated by the terms of this Agreement or otherwise to exercise, (x) all voting, corporate, consensual and other rights and privileges pertaining to the Pledged Interests and other Investment Property, whether at any meeting of shareholders (or members, partners or other comparable body, as applicable) of the relevant Pledged Issuer or Pledged Issuers, by written consent in lieu of a meeting or otherwise, and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to the Pledged Interests and other Investment Property as if it were the absolute owner thereof (including the right to exchange, at its discretion, any and all of the Pledged Interests or other Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate structure of any Pledged Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to the Pledged Interests or other Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Pledged Interests or other Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine in its sole discretion), all without liability except to account for property actually received by the Administrative Agent, but the Administrative Agent shall have no duty to any Grantor or any other Person to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing, (viii) to file any claims or take any action or institute any proceedings which the Administrative Agent may deem necessary or desirable for the collection of any Collateral or otherwise to enforce the rights of the Administrative Agent and the Term Loan Lenders with respect to any Collateral, (ix) the Administrative Agent in its sole discretion shall have the right to execute assignments, licenses and other documents to enforce the rights of the Administrative Agent and the Term Loan Lenders with respect to any Collateral, (x) the Administrative Agent

in its sole discretion shall have the right to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Administrative Agent in their respective sole discretion, and such payments made by the Administrative Agent to become Obligations of such Grantor, due and payable immediately without demand, (xi) the Administrative Agent in its sole discretion shall have the right to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts, Chattel Paper and other documents relating to the Collateral, (xii) the Administrative Agent in its sole discretion shall have the right to execute (to the extent necessary under applicable Law) on behalf of any Grantor any document (including any document required by the United States Trademark and Patent Office, the United States Copyright Office, or domain name registrar) to effect an assignment or sale of all right, title and interest in any of such Grantor's Intellectual Property constituting Collateral, and record the same and (xiii) the Administrative Agent in its sole discretion shall have the right to contact and enter into one or more agreements with the issuers of uncertificated securities that constitute Pledged Interests or with securities intermediaries holding Pledged Interests as may be necessary or advisable to give the Administrative Agent control over such Pledged Interests in accordance with the terms hereof. The Administrative Agent may exercise any such rights or privileges with respect to one or more of the Grantors at the same or different times, may waive any such rights or privileges in its sole discretion in part without suspending all such rights (as specified by the Administrative Agent in its sole discretion), and may temporarily waive any such rights or privileges in its sole discretion without waiving or otherwise affecting the Administrative Agent's right to exercise any such rights or privileges at any other time so long as an Event of Default has occurred and is continuing. Each Grantor hereby appoints the Administrative Agent as such Grantor's true and lawful attorney-in-fact, with full power of substitution, and grants to the Administrative Agent this IRREVOCABLE PROXY, to vote all or any part of the Pledged Interests and other Investment Property from time to time following the occurrence and during the continuance of an Event of Default, in each case in any manner the Administrative Agent deems advisable in its sole discretion for or against any or all matters submitted, or which may be submitted, to a vote of shareholders (including holders of any capital stock of any Pledged Issuer), partners or members, as the case may be, and to exercise all other rights, powers, privileges and remedies to which any such shareholders (including holders of any capital stock of any Pledged Issuer), partners or members would be entitled (including, without limitation, giving or withholding written consents of holders of capital stock of any Pledged Issuer, calling special meetings of the holders of the capital stock of any Pledged Issuer and voting at such meetings). The power-of-attorney and irrevocable proxy granted hereby are effective automatically upon the occurrence and during the continuance of an Event of Default without the necessity that any action (including, without limitation, that any transfer of any of the Pledged Interests or other Investment Property be recorded on the books and records of the relevant Pledged Issuer or that any of the Pledged Interests or other Investment Property be registered in the name of the Administrative Agent or any other Person) be taken by any Person (including the Pledged Issuer of the relevant Pledged Interests or other Investment Property or any officer or agent thereof), are coupled with an interest and shall be irrevocable, shall survive the bankruptcy, dissolution or winding up of each relevant Grantor, and shall terminate only upon the occurrence of Payment in Full.

(d) For the purpose of enabling the Administrative Agent to exercise rights and remedies hereunder, at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby (i) grants to the Administrative Agent an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, assign, license or sublicense any Intellectual Property now or hereafter owned by any Grantor, wherever the same may be located, including in such license (exercisable without payment of royalty or other compensation to any Grantor) 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; and (ii) assigns to the Administrative Agent, to the extent assignable, all of its rights to any Intellectual Property now or hereafter licensed or used by any Grantor. In connection with the foregoing, each Grantor hereby irrevocably agrees that, at any time and from time to time following the occurrence and during the continuance of an Event of Default, the Administrative Agent may exercise its rights and remedies hereunder with respect to any Grantor's Intellectual Property constituting Collateral and sell any Grantor's Inventory directly to any Person, including without limitation Persons who have previously purchased any Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Administrative Agent's rights under this Agreement, may (subject to any restrictions contained in applicable third party licenses entered into by a Grantor) sell Inventory which bears any Trademark owned by or licensed to any Grantor and any Inventory that is covered by any Intellectual Property owned by or licensed to such Grantor and the Administrative Agent may finish any work in process and affix any relevant Trademark owned by or licensed to any Grantor and sell such Inventory as provided herein. The exercise of rights and remedies hereunder by the Administrative Agent shall not terminate the rights of the holders of any licenses or sublicenses theretofore granted by any Grantor in accordance with the second sentence of this clause (d). Each Grantor hereby releases the Administrative Agent from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the Administrative Agent under the powers of attorney granted herein other than actions taken or omitted to be taken through the Administrative Agent's gross negligence or willful misconduct, as determined by a final determination of a court of competent jurisdiction.

(e) If any Grantor fails to perform any agreement or obligation contained herein, the Administrative Agent may itself perform, or cause performance of, such agreement or obligation, in the name of such Grantor or the Administrative Agent, and the expenses of the Administrative Agent incurred in connection therewith shall be jointly and severally payable by the Grantors pursuant to Section 10 hereof and shall be secured by the Collateral.

(f) The powers conferred on the Administrative Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Other than the exercise of reasonable care to assure the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Administrative Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral and shall be relieved of all responsibility for any Collateral in its possession upon surrendering it or tendering surrender of it to any of the Grantors (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct). The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Administrative Agent accords its own property, it being understood that the Administrative Agent shall not have responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Administrative Agent has or is deemed to have knowledge of such matters. The Administrative Agent shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by the Administrative Agent in good faith.

(g) Anything herein to the contrary notwithstanding (i) each Grantor shall remain liable under the Licenses and otherwise in respect of the Collateral to the extent set forth therein to perform all of its obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Administrative Agent of any of its rights hereunder shall not release any Grantor from any of its obligations under the Licenses or otherwise in respect of the Collateral, and (iii) the Administrative Agent shall not have any obligation or liability by reason of this Agreement under the Licenses or otherwise in respect of the Collateral, nor shall the Administrative Agent be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(h) The Administrative Agent may at any time in its discretion at any time an Event of Default has occurred and is continuing, subject to the Intercreditor Agreement, (i) without notice to any Grantor, transfer or register in the name of the Administrative Agent or any of its nominees any or all of the Pledged Interests, subject only to the revocable rights of such Grantor under Section 7(a) hereof, and (ii) exchange certificates or Instruments constituting Pledged Interests for certificates or Instruments of smaller or larger denominations.

(i) Without limiting any rights the Administrative Agent or any other Secured Party may otherwise have under applicable law or by agreement, in the event of any liquidation of the Collateral (or any other exercise of remedies by the Administrative Agent, including under this Section 8), the Administrative Agent or any other Person (including any Grantor) acting with the consent, or on behalf, of the Administrative Agent, shall have the right to use properties and assets of the Grantors that do not constitute Collateral, each of the foregoing in order to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, complete a production run of Inventory involving, take possession of, move, prepare and advertise for sale, sell (by public auction, private sale or a “store closing”, “going out of business” or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in the any Grantor’s business), store or otherwise deal with the Collateral, in each case without notice to, the involvement of or interference by or liability to any Grantor or any of their creditors. The Administrative Agent shall not be obligated to pay any amounts for or in respect of the use by the Administrative Agent or any other Person (including any Grantor) acting with the consent, or on behalf, of the Administrative Agent, of any properties and assets of the Grantors pursuant to this Section 8(i).

(a) The Administrative Agent may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein or otherwise available to it, all of the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Administrative Agent's name or into the name of its nominee or nominees (to the extent the Administrative Agent has not theretofore done so) and thereafter receive, for the benefit of the Administrative Agent and the Term Loan Lenders, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Administrative Agent forthwith, assemble all or part of the Collateral as directed by the Administrative Agent and make it available to the Administrative Agent at a place or places to be designated by the Administrative Agent that is reasonably convenient to both parties, and the Administrative Agent may enter into and occupy any premises owned or leased by any Grantor where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Administrative Agent's rights and remedies hereunder or under law, without obligation to any Grantor in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Administrative Agent's offices, at any exchange or broker's board or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Administrative Agent may reasonably deem commercially reasonable and/or (B) lease, license or otherwise dispose of the Collateral or any part thereof upon such terms as the Administrative Agent may reasonably deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale or any other disposition of the Collateral shall be required by law, at least ten (10) days' prior notice to the applicable Grantor of the time and place of any public sale or the time after which any private sale or other disposition of the Collateral is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale or other disposition of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Administrative Agent and the Term Loan Lenders arising by reason of the fact that the price at which the Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Administrative Agent accepts the first offer received and does not offer the Collateral to more than one offeree, and waives all rights that such Grantor may have to require that all or any part of the Collateral be marshaled upon any sale (public or private) thereof. Each Grantor hereby acknowledges that (i) any such sale of the Collateral by the Administrative Agent shall be made without warranty, (ii) the Administrative Agent may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, (iii) the Administrative Agent may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness), if permitted by law, for the purchase, lease, license or other disposition of the Collateral or any portion thereof for the account of the Administrative Agent (on behalf of itself and the Term Loan Lenders) and (iv) such actions set forth in clauses (i), (ii) and (iii) above shall not adversely affect the commercial reasonableness of any such sale of the Collateral. In addition to the foregoing, (i) upon written notice to any Grantor from the Administrative Agent, each Grantor shall cease any use of the Intellectual Property or any trademark, patent or copyright similar thereto for any purpose described in such notice; (ii) the Administrative Agent may, at any time and from time to time, upon ten (10) days' prior notice to any Grantor, license, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any of the Intellectual Property, throughout the universe for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its reasonable discretion determine; and (iii) the Administrative Agent may, at any time, pursuant to the authority granted in Section 8 hereof (such authority being effective upon the occurrence and during the continuance of an Event of Default), execute and deliver on behalf of a Grantor, one or more instruments of assignment of the Intellectual Property (or any application or registration thereof), in form suitable for filing, recording or registration in any country.

(b) Each Grantor recognizes that the Administrative Agent may deem it impracticable to effect a public sale of all or any part of the Pledged Shares or any other securities constituting Pledged Interests and that the Administrative Agent may, therefore, determine to make one or more private sales of any such securities to a restricted group of purchasers who will be obligated to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable to the seller than the prices and other terms which might have been obtained at a public sale and, notwithstanding the foregoing, agrees that such private sales shall be deemed to have been made in a commercially reasonable manner and that the Administrative Agent shall have no obligation to delay the sale of any such securities for the period of time necessary to permit the issuer of such securities to register such securities for public sale under the Securities Act. Each Grantor further acknowledges and agrees that any offer to sell such securities which has been (i) publicly advertised on a bona fide basis in a newspaper or other publication of general circulation in the financial community of New York, New York (to the extent that such an offer may be so advertised without prior registration under the Securities Act) or (ii) made privately in

the manner described above to not less than fifteen bona fide offerees shall be deemed to involve a “public disposition” for the purposes of Section 9-610(c) of the UCC (or any successor or similar, applicable statutory provision) as then in effect in the State of New York, notwithstanding that such sale may not constitute a “public offering” under the Securities Act, and that the Administrative Agent may, in such event, bid for the purchase of such securities.

(c) Any cash held by the Administrative Agent (or its agent or designee) as Collateral and all Cash Proceeds received by the Administrative Agent (or its agent or designee) in respect of any sale of or collection from, or other realization upon, all or any part of the Collateral may, in the discretion of the Administrative Agent, be held by the Administrative Agent (or its agent or designee) as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Administrative Agent pursuant to Section 10 hereof) in whole or in part by the Administrative Agent against, all or any part of the Secured Obligations in such order as the Administrative Agent shall elect, consistent with the provisions of the Credit Agreement and the Intercreditor Agreement. Any surplus of such cash or Cash Proceeds held by the Administrative Agent (or its agent or designee) and remaining after Payment in Full, shall be paid over to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(d) In the event that the proceeds of any such sale, collection or realization are insufficient to pay all amounts to which the Administrative Agent and the Term Loan Lenders are legally entitled, the Grantors shall be jointly and severally liable for the deficiency, together with interest thereon at the highest rate specified in any applicable Loan Document for interest on overdue principal thereof or such other rate as shall be fixed by applicable law, together with the costs of collection and the reasonable out-of-pocket fees, costs, expenses and other client charges of any attorneys employed by the Administrative Agent to collect such deficiency.

(e) Each Grantor hereby acknowledges that if the Administrative Agent complies with any applicable requirements of law in connection with a disposition of the Collateral, such compliance will not adversely affect the commercial reasonableness of any sale or other disposition of the Collateral.

(f) The Administrative Agent shall not be required to marshal any present or future collateral security (including, but not limited to, this Agreement and the Collateral) for, or other assurances of payment of, the Secured Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the Administrative Agent’s rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that any Grantor lawfully may, such Grantor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Administrative Agent’s rights under this Agreement or under any other instrument creating or evidencing any of the Secured Obligations or under which any of the Secured Obligations is outstanding or by which any of the Secured Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Grantor hereby irrevocably waives the benefits of all such laws.

(g) The Grantors irrevocably and unconditionally:

(i) consent to the appointment of pre-judgment and/or post-judgment receivers with all of the same powers that would otherwise be available to the Grantors, including, but not limited to the power to (A) hold, manage, control or dispose of the Collateral wherever located, (B) take any action with respect to the Collateral to the maximum extent permitted by law and (C) conduct a public or private sale of any or all of the Secured Parties’ right, title and interest in and to such Collateral, including any disposition of the Collateral to the Administrative Agent in exchange for cancellation of all or a portion of the Obligations;

(ii) consent that any such receiver can be appointed without a hearing or prior notice to the Grantors;

(iii) agrees not to oppose or otherwise interfere (directly or indirectly) with any effort by Administrative Agent to seek the appointment of a receiver;

- and
- (iv) waives any right to demand that a bond be posted in connection with the appointment of any such receiver;
- (v) waives any right to appeal the entry of an order authorizing the appointment of a receiver.

Section 10 Indemnity and Expenses. Each Grantor agrees that the Administrative Agent shall be entitled to reimbursement of expenses pursuant to Section 11.04 of the Credit Agreement, which is incorporated herein, *mutatis mutandis*, as if a part hereof, with each reference to the “Borrowers” or “Loan Parties” deemed to be a reference to the Grantors. The obligations in this Section 10 shall survive repayment of the Obligations.

Section 11 Notices, Etc. All notices and other communications provided for hereunder shall be given in accordance with the notice provision of the Credit Agreement.

Section 12 Security Interest Absolute; Joint and Several Obligations.

(a) All rights of the Secured Parties, all Liens and all obligations of each of the Grantors hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Credit Agreement or any other Loan Document, (ii) any change in the time, manner or place of payment of, or in any other term in respect of, all or any of the Secured Obligations, or any other amendment or waiver of or consent to any departure from the Credit Agreement or any other Loan Document, (iii) any exchange or release of, or non-perfection of any Lien on any Collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Secured Obligations, or (iv) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any of the Grantors in respect of the Secured Obligations other than Payment in Full. All authorizations and agencies contained herein with respect to any of the Collateral are irrevocable and powers coupled with an interest.

(b) Each Grantor hereby waives, to the extent permitted by applicable law, (i) promptness and diligence, (ii) notice of acceptance and notice of the incurrence of any Obligation by any of the Borrowers, (iii) notice of any actions taken by the Administrative Agent, any Term Loan Lender, any Guarantor or any other Person under any Loan Document or any other agreement, document or instrument relating thereto, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this subsection (b), might constitute grounds for relieving such Grantor of any such Grantor’s obligations hereunder and (v) any requirement that the Administrative Agent or any Term Loan Lender protect, secure, perfect or insure any security interest or other lien on any property subject thereto or exhaust any right or take any action against any Grantor or any other Person or any collateral.

(c) All of the obligations of the Grantors hereunder are joint and several. The Administrative Agent may, in its sole and absolute discretion, enforce the provisions hereof against any of the Grantors and shall not be required to proceed against all Grantors jointly or seek payment from the Grantors ratably. In addition, the Administrative Agent may, in its sole and absolute discretion, select the Collateral of any one or more of the Grantors for sale or application to the Secured Obligations, without regard to the ownership of such Collateral, and shall not be required to make such selection ratably from the Collateral owned by all of the Grantors. The release or discharge of any Grantor by the Administrative Agent shall not release or discharge any other Grantor from the obligations of such Person hereunder.

Section 13 Miscellaneous.

(a) No amendment of any provision of this Agreement (including any Schedule attached hereto) shall be effective unless it is in writing and signed by each Grantor affected thereby and the Administrative Agent, and no waiver of any provision of this Agreement, and no consent to any departure by any Grantor therefrom, shall be effective unless it is in writing and signed by the Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of the Secured Parties 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 such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Secured Parties 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 Secured Parties under any Loan Document against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights under any other Loan Document against such party or against any other Person, including but not limited to, any Grantor.

(c) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect, subject to paragraph (e) below, until Payment in Full and (ii) be binding on each Grantor all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the UCC, and shall inure, together with all rights and remedies of the Secured Parties hereunder, to the benefit of the Secured Parties and their respective successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, the Secured Parties may assign or otherwise transfer their respective rights and obligations under this Agreement and any other Loan Document to any other Person pursuant to the terms of the Credit Agreement, and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Secured Parties herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to any Secured Party shall mean the assignee of any such Secured Party. None of the rights or obligations of any Grantor hereunder may be assigned or otherwise transferred without the prior written consent of the Administrative Agent, and any such assignment or transfer shall be null and void.

(d) Upon the occurrence of Payment in Full, (i) subject to paragraph (e) below, this Agreement and the security interests and licenses created hereby shall terminate and all rights to the Collateral shall revert to the Grantors and (ii) the Administrative Agent will, upon the Grantors' request and at the Grantors' expense, without any representation, warranty or recourse whatsoever, (A) return to the Grantors (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct) such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof and (B) execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

(e) This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment or performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(f) Upon the execution and delivery, or authentication, by any Person of a security agreement supplement in substantially the form of Exhibit C hereto (each a "**Security Agreement Supplement**"), (i) such Person shall be referred to as an "**Additional Grantor**" and shall be and become a Grantor, and each reference in this Agreement to "Grantor" shall also mean and be a reference to such Additional Grantor, and each reference in this Agreement and the other Loan Documents to "Collateral" shall also mean and be a reference to the Collateral of such Additional Grantor, and (ii) the supplemental Schedules I-XI attached to each Security Agreement Supplement shall be incorporated into and become a part of and supplement Schedules I-XI, respectively, hereto, and the Administrative Agent may attach such Schedules as supplements to such Schedules, and each reference to such Schedules shall mean and be a reference to such Schedules, as supplemented pursuant hereto.

(g) THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT THE VALIDITY AND PERFECTION OR THE PERFECTION AND THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTEREST CREATED HEREBY, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

(h) EACH GRANTOR HEREBY IRREVOCABLY CONSENTS TO AND WAIVES ANY RIGHT TO OBJECT TO OR OTHERWISE CONTEST THE APPOINTMENT OF A RECEIVER AFTER THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT. EACH GRANTOR (i) GRANTS SUCH WAIVER AND CONSENTS KNOWINGLY AFTER HAVING DISCUSSED THE IMPLICATIONS THEREOF WITH COUNSEL, (ii) ACKNOWLEDGES THAT (A) THE UNCONTESTED RIGHT TO HAVE A RECEIVER APPOINTED FOR THE FOREGOING PURPOSES IS CONSIDERED ESSENTIAL BY THE ADMINISTRATIVE AGENT AND THE TERM LOAN LENDERS IN CONNECTION

WITH THE ENFORCEMENT OF THEIR RIGHTS AND REMEDIES HEREUNDER AND UNDER THE OTHER DOCUMENTS EXECUTED IN CONNECTION HERewith, AND (B) THE AVAILABILITY OF SUCH APPOINTMENT AS A REMEDY UNDER THE FOREGOING CIRCUMSTANCES WAS A MATERIAL FACTOR IN INDUCING THE ADMINISTRATIVE AGENT AND TERM LOAN LENDERS TO MAKE (AND COMMIT TO MAKE) THE TERM LOANS TO THE BORROWERS, AND (iii) AGREES TO ENTER INTO ANY AND ALL STIPULATIONS IN ANY LEGAL ACTIONS, OR AGREEMENTS OR OTHER INSTRUMENTS IN CONNECTION WITH THE FOREGOING AND TO COOPERATE FULLY WITH THE ADMINISTRATIVE AGENT OR TERM LOAN LENDERS IN CONNECTION WITH THE ASSUMPTION AND EXERCISE OF CONTROL BY THE RECEIVER OVER ALL OR ANY PORTION OF THE COLLATERAL.

(i) In addition to and without limitation of any of the foregoing, this Agreement shall be deemed to be a Loan Document and shall otherwise be subject to all of the terms and conditions contained in Sections 11.14, 11.15 and 11.16 of the Credit Agreement, *mutatis mutandis*.

(j) Each Grantor and the Administrative Agent irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding with respect to this Agreement any special, exemplary, punitive or consequential damages.

(k) 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 thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(l) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(m) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart.

Section 14 Intercreditor Agreement.

(a) Notwithstanding any other provision contained herein, this Agreement is subject in all respects to the provisions of the Intercreditor Agreement, including without limitation, the Liens created hereby and the exercise of any rights, remedies, duties or obligations provided for herein or the application of proceeds (including insurance and condemnation proceeds) of any Collateral.

(b) Notwithstanding anything herein to the contrary, with respect to the ABL Priority Collateral, until the Discharge of ABL Obligations (as defined in the Intercreditor Agreement), any obligation of any Grantor hereunder or under any other Collateral Document with respect to the delivery of any ABL Priority Collateral shall be deemed to be satisfied if such Grantor complies with the requirements of the similar provision of the ABL Collateral Documents (as defined in the Intercreditor Agreement).

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IN WITNESS WHEREOF, each Grantor and the Administrative Agent has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTORS:

PURPLE INNOVATION, LLC

By: /s/ Bennett Nussbaum
Name: Bennett Nussbaum
Title: Chief Financial Officer and Treasurer

PURPLE INNOVATION, INC.

By: /s/ Bennett Nussbaum
Name: Bennett Nussbaum
Title: Chief Financial Officer and Treasurer

INTELLIBED, LLC

By: /s/ Casey K. McGarvey
Name: Casey K. McGarvey
Title: President, Treasurer and Secretary

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ADMINISTRATIVE AGENT:

CALLODINE COMMERCIAL FINANCE, LLC,
as Administrative Agent

By: /s/ Michael Watson
Name: Michael Watson
Title: Managing Director

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CREDIT AGREEMENT

Dated as of August 7, 2023

among

PURPLE INNOVATION, LLC,
as a Borrower,PURPLE INNOVATION, INC.,
as Guarantor,CERTAIN FINANCIAL INSTITUTIONS,
as Lenders,

and

BANK OF MONTREAL,
as Administrative Agent and Swing Line LenderBMO CAPITAL MARKETS,
as Arranger and Book Runner

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CREDIT AGREEMENT

This **CREDIT AGREEMENT** (this “*Agreement*”) is entered into as of August 7, 2023, among PURPLE INNOVATION, LLC, a Delaware limited liability company (the “*Company*” or “*Borrower*” and collectively with any other entities that become a “Borrower” hereunder, the “*Borrowers*”), PURPLE INNOVATION, INC., a Delaware corporation (“*Holdings*”), **EACH LENDER FROM TIME TO TIME PARTY HERETO** (collectively, the “*Lenders*” and individually, a “*Lender*”), and **BANK OF MONTREAL**, as Administrative Agent, Swing Line Lender and Letter of Credit Issuer.

Preliminary Statements

A. The Borrowers have requested that Lenders, the Swing Line Lender and the Letter of Credit Issuer provide certain credit facilities to the Borrowers to finance their mutual and collective business enterprise.

B. Lenders are willing to provide the credit facilities on the terms and conditions set forth in this Agreement.

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

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“ABL Priority Collateral” has the meaning set forth in the Intercreditor Agreement.

“Account” means “accounts” as defined in the UCC.

“Account Debtor” means any Person who is or may become obligated under or on account of any Account, Contractual Obligation, Chattel Paper or General Intangible.

“ACH” means automated clearing house transfers.

“Acquisition” means (a) the acquisition of a controlling Equity Interest or other ownership interest in or Control of another Person, whether by purchase of such Equity Interest or other ownership interest or upon exercise of an option or warrant for, or conversion of securities into, such Equity Interest or other ownership interest, or (b) the acquisition of assets of another Person which constitute all or substantially all of the assets of such Person or of a line or lines of business conducted by such Person, whether in one or a series of related transactions or (c) the merger, consolidation or combination of Holdings, a Borrower or a Subsidiary with another Person (other than (i) in the case of any Subsidiary, a Subsidiary into a Borrower or any other Subsidiary or (ii) in the case of a Borrower, into another Borrower).

“Additional Commitment Lender” has the meaning specified in Section 2.18(c).

“Adjustment Date” has the meaning specified in the definition of “Applicable Margin.”

“Adjusted Term SOFR” means with respect to any tenor, the per annum rate equal to the sum of (i) Term SOFR plus (ii) 0.10% (10 basis points); provided, that if Adjusted Term SOFR determined as provided above shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“Administrative Agent” means Bank of Montreal, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower Agent and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For the purposes of (i) Section 8.08 and (ii) the proviso to the definition of “Eligible Assignee” only, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent or is an officer or director of the specified Person.

“Agent Indemnitee” has the meaning specified in Section 11.04(c).

“Agent Indemnitee Liabilities” has the meaning specified in Section 11.04(c).

“Aggregate Revolving Credit Commitments” means, as at any date of determination thereof, the sum of all Revolving Credit Commitments of all Lenders at such date.

“Agreement” means this Credit Agreement.

“Allocable Amount” has the meaning specified in Section 2.15(c)(ii).

“ALTA Survey” means a survey reasonably satisfactory to the Administrative Agent prepared in accordance with the standards adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1997, known as the “Minimum Standard Detail Requirements of Land Title Surveys” and sufficient form to satisfy the requirements any applicable title insurance company to provide extended coverage over survey defects and shall also show the location of all easements, utilities, and covenants of record, dimensions of all improvements, encroachments from any adjoining property, and certify as to the location of any flood plain area affecting the subject Real Property.

“Anti-Corruption Laws” means all Laws of any jurisdiction applicable to a Loan Party or any of their Subsidiaries from time to time targeting or relating to bribery or corruption, including the FCPA and the UK Bribery Act 2010.

“Anti-Money Laundering Laws” means all Laws applicable to a Loan Party or its Subsidiaries related to terrorism financing or money laundering, including Executive Order No. 13224, the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the PATRIOT Act, and the Money Laundering Control Act of 1986.

“Applicable Margin” means with respect to any Type of Loan, the percentages per annum set forth below, as based upon the Average Availability for the immediately preceding fiscal quarter:

Level	Average Availability (as a percentage of Aggregate Revolving Credit Commitments)	SOFR Revolving Credit Loans	Base Rate Revolving Credit Loans
I	> 66.7%	2.75%	1.75%
II	< 66.7% but > 33.3%	3.00%	2.00%
III	< 33.3%	3.25%	2.25%

From the Closing Date until the first day of each fiscal quarter, commencing with January 1, 2024 (the “Adjustment Date”), margins shall be determined as if Level II were applicable. Thereafter, any increase or decrease in the Applicable Margin resulting from a change in Average Availability shall become effective as of each Adjustment Date based upon Average Availability for the immediately preceding fiscal quarter. If any Borrowing Base Certificate (including any required financial information in support thereof) of the Borrowers is not received by Administrative Agent by the date required pursuant to Section 7.02(a), then the Applicable Margin shall be determined as if the Average Availability for the immediately preceding fiscal quarter is at Level III until such time as such Borrowing Base Certificate and supporting information are received.

“Applicable Percentage” means in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility, represented by the amount of the Revolving Credit Commitment of such Revolving Credit Lender at such time; provided that if the Aggregate Revolving Credit Commitments have been terminated at such time, then the Applicable Percentage of each Revolving Credit Lender shall be the Applicable Percentage of such Revolving Credit Lender immediately prior to such termination and after giving effect to any subsequent assignments. The initial Applicable Percentage of each Revolving Credit Lender with respect to the Revolving Credit Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Revolving Credit Percentage” means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender’s Applicable Percentage in respect of the Revolving Credit Facility at such time.

“Appropriate Lender” means, at any time, (a) with respect to the Revolving Credit Facility, the Revolving Credit Lenders, (b) with respect to the Letter of Credit Sublimit, (i) the Letter of Credit Issuer and (ii) if any Letters of Credit have been issued, the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding, the Revolving Credit Lenders.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means BMO Capital.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“Assumed Indebtedness” means Indebtedness of a Person which is (a) in existence at the time such Person becomes a Subsidiary or a Borrower or (b) assumed in connection with an Investment in or Acquisition of such Person, and which, in each case, (i) has not been incurred or created in connection with, or in anticipation or contemplation of, such Person becoming a Subsidiary or Borrower, (ii) only such Person (or its Subsidiaries so acquired) are obligors with respect to such Indebtedness, (iii) such Indebtedness is not a revolving loan facility; and (iv) such Indebtedness is not secured by any Liens on working capital assets.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

“Audited Financial Statements” means the audited Consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended December 31, 2022, and the related Consolidated statements of income or operations, retained earnings and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

“Auditor” has the meaning specified in Section 7.01(a).

“Auto-Extension Letter of Credit” has the meaning specified in Section 2.03(b)(iii).

“Availability” means (a) the Maximum Borrowing Amount minus (b) Total Revolving Credit Outstandings.

In calculating Availability at any time and for any purpose under this Agreement, the Borrower Agent, on behalf of the Borrowers, shall certify to the Administrative Agent that all accounts payable and Taxes are being paid on a timely basis and consistent with past practices (absent which the Administrative Agent may establish a Reserve therefor).

“Availability Period” means the period from the Closing Date to the Revolving Credit Termination Date.

“Availability Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves and adjustments thereto as the Administrative Agent from time to time determines in its Credit Judgment as being appropriate (a) to reflect the impediments to the Administrative Agent’s ability to realize upon the Eligible Borrowing Base Assets, (b) to reflect sums that any Loan Party may be required to pay under this Agreement or any other Loan Document (including taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay when due, (c) to reflect amounts for which claims may be reasonably expected to be asserted against the Eligible Borrowing Base Assets or the Administrative Agent or the Lenders with respect to the Loan Documents, (d) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party or (e) to reflect that a Default or Event of Default exists. Without limiting the generality of the foregoing but subject to the Administrative Agent’s Credit Judgment, Availability Reserves may include (but are not limited to) (i) Rent and Charge Reserves; (ii) the Dilution Reserve; (iii) Credit Product Reserves, (iv) Wage Claim Reserves, (v) customs duties, and other costs to release Inventory which is being imported into the United States; (vi) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, and other Taxes (in all cases which have not been paid) which might have priority over the interests of the Administrative Agent in the Eligible Borrowing Base Assets; (vii) any other liabilities not specifically addressed herein that are or may become secured by Liens on the Collateral (including Permitted Liens) which might have priority over the Liens or interests of the Administrative Agent in the Collateral; (viii) reserves for any royalty or other compensation owing to any Person with respect to any Intellectual Property related to Borrowing Base Assets; (ix) reserves with respect to the salability of Eligible Inventory or which reflect such other factors as affect the market value of the Eligible Inventory, including obsolescence, seasonality, Shrink; vendor chargebacks, imbalance, change in Inventory character, composition or mix, markdowns and out of date and/or expired Inventory and (x) reserves which the Administrative Agent deems necessary in its Credit Judgment to address the adverse results of any audit or appraisal performed by or on behalf of the Administrative Agent in accordance with this Agreement from time to time (to the extent such adverse results are not reflected in the NOLV of Eligible Inventory and Eligible In-Transit Inventory).

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) 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 (y) 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 3.03(b)(iv).

“Average Availability” means for any period, the average daily amount of Availability during such period.

“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 which 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.

“Base Rate” means, for any day, a fluctuating rate per annum equal to the highest of (a) the rate of interest announced by BMO from time to time as its prime rate for such day (with any change in such rate announced by BMO taking effect at the opening of business on the day specified in the public announcement of such change); (b) the Federal Funds Rate for such day, plus 0.50%, and (c) the sum of (i) Adjusted Term SOFR for a one-month tenor in effect on such day plus (ii) 1.00%. Any change in the Base Rate due to a change in the prime rate, the Federal Funds Rate or Adjusted Term SOFR, as applicable, shall be effective from and including the effective date of the change in such rate. If the Base Rate is being used as an alternative rate of interest pursuant to Section 3.03, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above, provided that if Base Rate as determined above shall ever be less than the Floor *plus* 1.00%, then Base Rate shall be deemed to be the Floor *plus* 1.00%.

“Base Rate Loan” means a Base Rate Revolving Credit Loan.

“Base Rate Revolving Credit Loan” means a Revolving Credit Loan that bears interest based on the Base Rate.

“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 3.03(b)(i).

“Benchmark Replacement” means the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date,

(a) the sum of (i) Daily Simple SOFR plus (ii) 0.10% (10 basis points);

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Agent giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) 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.

“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 adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Agent 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 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 such Benchmark (or the published component used in the calculation thereof) has 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) (a) 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 3.03(b) and (b) 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 3.03(b).

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

“Beneficial Ownership Regulation” means 31 C.F.R. § 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 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”.

“BHC Act Affiliate” has the meaning specified in Section 11.21(b).

“BMO” means Bank of Montreal.

“BMO Capital” means BMO Capital Markets.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers or board of directors or sole member or manager of such Person or any Person or any committee thereof duly authorized to act on behalf of such board, (c) in the case of any partnership, the Board of Directors of a general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

“Borrower Agent” has the meaning specified in Section 2.15(g).

“Borrowers” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 7.02.

“Borrowing” means any of (a) a Revolving Credit Borrowing, or (b) a Swing Line Borrowing, as the context may require.

“Borrowing Base” means, at any time of calculation, an amount equal to:

(a) the Value of Eligible Accounts (less all cash received but not yet applied in respect of such Eligible Accounts) multiplied by 85%; plus

(b) the face amount of Eligible Credit Card Receivables multiplied by 90%; plus

(c) the NOLV of Eligible Inventory multiplied by 90%; plus

(d) the NOLV of Eligible In-Transit Inventory, multiplied by 90%; provided that in no event shall amounts advanced under the Borrowing Base pursuant to this clause (d) exceed \$5,000,000; minus

(e) the amount of all Availability Reserves; minus

(f) the Term Loan Push Down Reserve.

The term “Borrowing Base” and the calculation thereof shall not include any assets or property acquired in an Acquisition or otherwise outside the ordinary course of business unless (x) if so required by the Administrative Agent, the Administrative Agent has conducted or received Field Exams and appraisals reasonably required by it (with results reasonably satisfactory to the Administrative Agent) and (y) the Person owning such assets or property shall be a (directly or indirectly) wholly-owned Domestic Subsidiary of the Company and have become a Borrower.

“Borrowing Base Assets” means all assets of the Borrowers of the type included in the Borrowing Base, regardless of eligibility thereof.

“Borrowing Base Certificate” means a certificate, in the form of Exhibit D hereto and otherwise in satisfactory to Administrative Agent, by which Borrowers certify calculation of the Borrowing Base and the Term Facility Borrowing Base.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located.

“Capital Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, (a) for the benefit of one or more of the Letter of Credit Issuer or the Revolving Credit Lenders, as collateral for Letter of Credit Obligations or obligations of the Revolving Credit Lenders to fund participations in respect of Letter of Credit Obligations, cash or deposit account balances or, if the Administrative Agent and the Letter of Credit Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Letter of Credit Issuer or (b) for the benefit of the Administrative Agent, as collateral for Protective Advances or Swing Line Loans that have not been refunded by the Revolving Credit Lenders, cash or deposit account balances or, if the Administrative Agent shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent or (c) for the benefit of the Secured Parties during the continuance of an Event of Default or in connection with the Payment in Full, as collateral for any Obligations that are due or may become due, cash or deposit account balances or, if the Administrative Agent shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following types of property, to the extent owned by the Company or any of its Subsidiaries free and clear of all Liens (other than Liens created under the Security Instruments):

(a) cash, denominated in Dollars;

(b) readily marketable direct obligations of the government of the United States or any agency or instrumentality thereof, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by the government of the United States or any state or municipality thereof, in each case so long as such obligation has an investment grade rating by S&P and Moody’s;

(c) commercial paper rated at least P-1 (or the then equivalent grade) by Moody’s and A-1 (or the then equivalent grade) by S&P, or carrying an equivalent rating by a nationally recognized rating agency if at any time neither Moody’s nor S&P shall be rating such obligations;

(d) insured certificates of deposit or bankers’ acceptances of, or time deposits with any Lender, or with any commercial bank that (i) is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in the first portion of clause (c) above, (iii) is organized under the laws of the United States or of any state thereof and (iv) has combined capital and surplus of at least \$500,000,000;

(e) readily marketable general obligations of any corporation organized under the laws of any state of the United States of America, payable in the United States of America, expressed to mature not later than twelve months following the date of issuance thereof and rated A or better by S&P or A3 or better by Moody’s; and

(f) readily marketable shares of investment companies or money market funds that, in each case, invest solely in the foregoing Investments described in clauses (a) through (e) above.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“CFC” has the meaning specified in the definition of “Excluded Subsidiary”.

“CFCHC” has the meaning specified in the definition of “Excluded Subsidiary”.

“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, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

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

(a) Other than the Common B shares issued and outstanding on the Closing Date (except to the extent any are repurchased, retired or otherwise acquired pursuant to Section 8.06(c)), Holdings shall fail to own and control, beneficially and of record/directly or indirectly, 100% of the issued and outstanding equity interests of the Company; or

(b) The Common B Holders assign or transfer any of the Equity Interests of the Company to any Person other than as permitted under the Organization Documents of Holdings as in effect on the Closing Date or as modified as agreed to by the Administrative Agent and the Required Lenders; or

(c) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of Holdings 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 the “beneficial owner” (as defined in Rules 13d-4 and 13d-6 under the Exchange Act, 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 (such right, an “option right”), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the Equity Interests of Holdings on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any option right); or

(d) during any period of 24 consecutive months beginning on the Closing Date, a majority of the members of the board of directors or other equivalent governing body of Holdings cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(e) the Company shall fail to own and control, beneficially and of record (directly or indirectly), 100% of the issued and outstanding Equity Interests of each of its Subsidiaries, except where such failure is the result of a transaction permitted under the Loan Documents; or

(f) any “change of control” or similar event occurs under the Organization Documents of Holdings or any other Loan Party or under any Material Contract to which Holdings or any other Loan Party is a party.

“Closing Date” means the first date all the conditions precedent in Section 5.01 are satisfied or waived in accordance with Section 11.01 (or, in the case of Section 5.01(b), waived by the Person entitled to receive the applicable information).

“Code” means the Internal Revenue Code of 1986.

“Collateral” means, collectively, certain property of the Loan Parties or any other Person in which the Administrative Agent or any Secured Party is granted a Lien under any Security Instrument as security for all or any portion of the Obligations or any other obligation arising under any Loan Document.

“Commitment” means a Revolving Credit Commitment.

“Commitment Increase” has the meaning specified in Section 2.18(a).

“Committed Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of SOFR Loans, in each case, described in Section 2.02, and substantially in the form of Exhibit H.

“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.

“Common B Holders” means the holders of Common B shares of Holdings and Class B Units of Borrower. As of the Closing Date the Common B Holders are set forth on Schedule 1.02 hereto.

“Communication” means this Agreement, any Loan Document and any document, amendment, waiver, forbearance, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document (including any Assignment and Assumption).

“Company” has the meaning specified in the introductory paragraph hereto.

“Compliance Certificate” means a certificate substantially in the form of Exhibit B.

“Concentration Account” has the meaning specified in Section 4.04(b).

“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 “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities 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, the timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.05, 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).

“Conforming Credit Product Obligations” means Credit Product Obligations (a) arising under a Credit Product Arrangement entered into with BMO or its Affiliates, or (b) which are (i) established pursuant to a Credit Product Notice delivered at a time no Event of Default is continuing and (ii) up to the maximum amount (or, in the case of Credit Product Obligations arising under Swap Contracts, the Swap Termination Value thereunder) specified in such Credit Product Notice (whether delivered to establish or increase the amount thereof) to the extent that no Overadvance would exist if a Credit Product Reserve were established therefore on the date of such Credit Product Notice.

“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 the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

“Consolidated Capital Expenditures” means, with respect to Holdings and its Subsidiaries on a Consolidated basis, for any period the sum of (without duplication) all expenditures (whether paid in cash or accrued as liabilities) by Holdings or any Subsidiary during such period for items that would be classified as “property, plant or equipment” or comparable items on the Consolidated balance sheet of Holdings and its Subsidiaries, including without limitation all transactional costs incurred in connection with such expenditures provided the same have been capitalized; provided that Consolidated Capital Expenditures shall exclude any capital expenditures (a)

financed with Indebtedness permitted hereunder other than Loans, (b) made with (i) Net Cash Proceeds from any Disposition described in Section 8.05(b) or (ii) proceeds of insurance arising from any casualty or other insured damage or from condemnation or similar awards with respect to any property or asset, in each case, to the extent such proceeds are reinvested within 180 days of receipt thereof, (c) constituting any portion of the purchase price of an Permitted Acquisition which is accounted for as a capital expenditure or (d) which is required to be reimbursed by a third-party pursuant to an enforceable contract obligation and is reimbursed within 180 days of the incurrence of such capital expenditure.

“Consolidated EBITDA” means, for any period, Consolidated Net Income for such period; plus, (a) to the extent deducted in determining such Consolidated Net Income for such period, without duplication, (i) Consolidated Interest Charges (net of interest income for such period of Holdings and its Subsidiaries), plus (ii) federal, state, local and foreign income tax expense for such period, net of income tax credits, plus (iii) depreciation and amortization, plus (d) non-cash compensation expense, or other non-cash expenses or charges, arising from the granting of stock options, restricted stock, stock appreciation rights or similar equity arrangements, plus (iv) non-cash expenses or losses and other non-cash charges incurred (excluding any non-cash charges representing an accrual of, or reserve for, cash charges to be paid within the next twelve months and reduced by any cash payments made during such period in respect of such non-cash items added back in a prior period); plus (v) expenses of up to \$4,000,000 incurred in connection with the Transaction, plus (vi) transaction expenses (other than depreciation and amortization expenses) of up to \$4,000,000 during the term of this Agreement incurred in connection with any Acquisition, Investment or Disposition permitted hereunder or the defense of any ownership or control take-over; plus (vii) proceeds of business interruption insurance received in cash during such period; plus (viii) non-recurring and unusual out-of-pocket costs and charges in an amount not to exceed \$2,000,000 per year and \$6,000,000 in the aggregate; minus (b) to the extent included in determining Consolidated Net Income for such period, without duplication, non-cash income, gains or profits (including, without limitation, non-cash extraordinary gains), in each case as determined for Holdings and its Subsidiaries on a Consolidated basis and subject to applicable Pro Forma Adjustments.

“Consolidated Fixed Charge Coverage Ratio” means the ratio, determined on a Consolidated basis for Holdings and its Subsidiaries for the applicable Measurement Period, of (a) Consolidated EBITDA minus Consolidated Capital Expenditures to (b) Consolidated Fixed Charges.

“Consolidated Fixed Charges” means, for any period, for Holdings and its Subsidiaries on a Consolidated basis, the sum of, without duplication, (a) Consolidated Interest Charges paid or required to be paid in cash during such period, (b) all scheduled and mandatory principal repayments made or required to be made of Consolidated Funded Indebtedness during such period (excluding (i) any such payments to the extent constituting a refinancing of such Consolidated Funded Indebtedness through the incurrence of additional Indebtedness otherwise expressly permitted under Section 8.01 and (ii) repayments of Revolving Credit Loans), (c) the aggregate amount of federal, state, local and foreign income taxes paid in cash, in each case, of or by Holdings and its Subsidiaries during such period, and (d) all Restricted Payments (excluding payments made pursuant to Section 8.06(e)) in cash during such period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for Holdings and its Subsidiaries on a Consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under standby and commercial letters of credit (excluding the undrawn amount thereof), bankers’ acceptances, bank guaranties (excluding the amounts available thereunder as to which demand for payment has not yet been made), surety bonds (excluding the amounts available thereunder as to which demand for payment has not yet been made) and similar instruments (excluding the amounts available thereunder as to which demand for payment has not yet been made), (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable arising in the Ordinary Course of Business being paid on a timely basis and consistent with past practices), (e) Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than Holdings or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which Holdings or a Subsidiary is a general partner or joint venturer, to the extent such Indebtedness is recourse to Holdings or such Subsidiary.

“Consolidated Interest Charges” means, with respect to Holdings and its Subsidiaries for any period ending on the date of computation thereof, the gross interest expense of Holdings and its Subsidiaries, including without limitation (a) the current amortized portion of all fees (including fees payable in respect of any Swap Contract in the nature of an interest rate hedge and all fees payable in respect of any Letter of Credit) payable in connection with the incurrence of Indebtedness to the extent included in gross interest expense and (b) the portion of any payments made in connection with Capital Leases allocable to interest expense, all determined on a Consolidated basis; provided however, that Consolidated Interest Charges shall include the amount of payments in respect of Synthetic Lease Obligations that are in the nature of interest.

“Consolidated Net Income” means, for any period, for Holdings and its Subsidiaries on a Consolidated basis, the net income after taxation of Holdings and its Subsidiaries for that period excluding (a) net losses or gains realized in connection with (i) any sale, lease, conveyance or other disposition of any asset (other than in the Ordinary Course of Business), or (ii) repayment, repurchase or redemption of Indebtedness, and (b) extraordinary or nonrecurring gain or income (or expense), including, any compensation charge incurred in connection with the Transactions; provided that there shall be excluded from Consolidated Net Income, without duplication, the net income of (x) any Person that is not a Subsidiary or that is accounted for by the equity method of accounting to the extent of the amount of dividends or distributions are not actually paid to the Company or a Subsidiary in cash, (y) any Person in which any other Person (other than the Company or a Subsidiary) has an ownership interest, except to the extent of the amount of dividends or other distributions actually paid in cash to the Company or a Subsidiary by such Person during such period and (z) any Person the ability of which to make Restricted Payments is restricted by any agreement or Organization Document, except to the extent of the amount of dividends or other distributions actually paid in cash to Holdings or a Subsidiary by such Person during such period.

“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 the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a 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, Securities Account or Commodity Account, an agreement, in form and substance satisfactory to the Administrative Agent, among the Administrative Agent, the Term Loan Agent (if applicable), the financial institution or other Person at which such account is maintained and the Loan Party maintaining such account, effective to grant “control” (as defined under the applicable UCC) over such account to the Administrative Agent.

“Controlled Account” means each Controlled Deposit Account, Controlled Securities Account and Controlled Commodities Account.

“Controlled Account Bank” means each bank, securities intermediary or other financial institution with whom Deposit Accounts or Securities Accounts of any of the Loan Parties are maintained and with whom a Control Agreement has been, or is required to be, executed in accordance with the terms hereof.

“Controlled Commodities Account” means each Commodities Account (including all funds on deposit therein) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with an intermediary approved by the Administrative Agent.

“Controlled Deposit Account” means each Deposit Account (including all funds on deposit therein) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a financial institution approved by the Administrative Agent.

“Controlled Persons” means, with respect to any Person, (a) its Subsidiaries and Affiliates, (b) its officers, directors, employees and agents and (c) the officers, directors, employees and agents of such Subsidiaries and Affiliates.

“Controlled Securities Account” means such Securities Account (including all Securities or Investment Property deposited or credited thereto) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a financial institution approved by the Administrative Agent.

“Core Business” means any material line of business conducted by Holdings and its Subsidiaries as of the Closing Date and any business directly related thereto.

“Cost” means with respect to Inventory, the lower of (i) cost (as reflected in the general ledger of such Person) and (ii) market value, in each case, determined in accordance with GAAP calculated on a first-in, first-out basis and in accordance with the Loan Parties’ accounting practices as in effect on the Closing Date.

“Covered Entity” has the meaning specified in Section 11.21(b).

“Credit Card Agreements” means all agreements now or hereafter entered into by any Borrower or any Guarantor for the benefit of any Borrower with respect to the processing and/or payment to any Borrower of the proceeds of any credit card charges and debit card charges (or similar payments) for sales made by such Loan Party, in each case with any Credit Card Issuer or any Credit Card Processor, including, but not limited to, the agreements set forth on Schedule 6.19 hereto.

“Credit Card Issuer” means any person (other than a Borrower or other Loan Party) who issues or whose members issue credit cards or provides similar financing to Borrower’s customers, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche, Affirm, Inc., PayPal, Inc., Shopify Inc. and other non-bank credit or debit cards approved by the Administrative Agent (which consent will not be unreasonably withheld or delayed).

“Credit Card Processor” means any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower’s sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

“Credit Card Notifications” has the meaning provided in Section 4.02(c).

“Credit Card Receivables” means each “payment intangible” (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Loan Party resulting from charges by a customer of a Loan Party on credit or debit cards issued by such Credit Card Issuer in connection with the sale of goods by a Loan Party, or services performed by a Loan Party, in each case in the ordinary course of its business.

“Credit Exposure” means, as to any Lender at any time, the aggregate amount of such Lender’s Revolving Credit Exposure at such time.

“Credit Extension” means each of the following: (a) a Borrowing and (b) a Letter of Credit Extension.

“Credit Judgment” means, with reference to the Administrative Agent, a determination made in good faith using reasonable business judgment (from the perspective of a secured, asset-based lender).

“Credit Product Arrangements” means, collectively, (a) Swap Contracts between a Loan Party and any Lender or Affiliate of a Lender and (b) Treasury Management and Other Services.

“Credit Product Notice” means the written notice from a Credit Product Provider and the Borrower Agent to the Administrative Agent relating to Credit Product Arrangements in the form of Exhibit F hereto, or such other form as may be acceptable to the Administrative Agent.

“Credit Product Obligations” means Indebtedness and other obligations of any Loan Party (a) arising under Credit Product Arrangements and owing to any Credit Product Provider and (b) to the extent owing to a Credit Product Provider other than BMO or its Affiliates, as to which a Credit Product Notice has been delivered to the Administrative Agent in which the Borrower Agent has

expressly requested that such obligations be treated as Credit Product Obligations for purposes hereof; provided, however, Credit Product Obligations shall not include Excluded Swap Obligations.

“Credit Product Provider” means (a) BMO or any of its Affiliates and (b) any other Lender or an Affiliate of a Lender that is a provider under a Credit Product Arrangement, so long as such provider and the Borrower Agent deliver a Credit Product Notice to the Administrative Agent by the later of the Closing Date or, if not outstanding on the Closing Date, 10 days following the entering into of the applicable Credit Product Arrangement, (i) describing the Credit Product Arrangement and setting forth the maximum amount of Credit Product Obligations thereunder to be secured by the Collateral (and, if all or any portion of such Credit Product Obligations arise under Swap Contracts, the Swap Termination Value of such Credit Product Obligations) and the methodology to be used in calculating such amount and (ii) agreeing to be bound by Section 10.12.

“Credit Product Reserve” means (a) reserves which shall be established by the Administrative Agent in an amount equal to not less than the last reported Swap Termination Value (as given in accordance with the definition of Credit Product Obligation) of the then outstanding Priority Swap Obligations for the account of the Loan Parties or their Affiliates, and (b) reserves established by the Administrative Agent from time to time in its discretion to reflect the reasonably anticipated liabilities in respect of the then outstanding Credit Product Obligations.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

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

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would unless cured or waived be an Event of Default.

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Margin with respect to Base Rate Loans plus (c) 2% per annum; provided, however, that (i) with respect to a SOFR Loan, until the end of the Interest Period during which the Default Rate is first applicable, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such SOFR Loan plus 2% per annum, and thereafter as set forth in the portion of this sentence preceding this proviso, and (ii) with respect to Letter of Credit Fees, the Default Rate shall equal the Letter of Credit Fee, then in effect plus 2% per annum, in each case to the fullest extent permitted by applicable Laws.

“Default Right” has the meaning specified in Section 11.21(b).

“Defaulting Lender” means, subject to Section 2.17(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower Agent 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, the Letter of Credit Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including, in the case of any Revolving Credit Lender, in respect of its participations in Letters of Credit or Swing Line Loans) within two (2) Business Days of the date when due, (b) has notified any Borrower, the Administrative Agent, the Letter of Credit Issuer or the 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, 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 Borrower Agent, to confirm in writing to the Administrative Agent and the Borrower Agent 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 Borrower Agent), 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; 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 the 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 2.17(b)) upon delivery of written notice of such determination by the Administrative Agent to the Borrower Agent, the Letter of Credit Issuer, the Swing Line Lender and each other Lender.

“Designated Jurisdiction” means, at any time, any country, region or territory which is itself the target of Sanctions broadly restricting or prohibiting dealings with such country, region or territory.

“Dilution Percent” means the percent, for the most recently ended period of twelve (12) consecutive months, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts for such period, divided by (b) gross sales for such period.

“Dilution Reserve” means, at any date of determination, (a) the percentage amount, if any, by which the Dilution Percent exceeds 5.0% times (b) the amount of Eligible Accounts of the Borrowers.

“Direct Foreign Subsidiary” means a Subsidiary, other than a Domestic Subsidiary that is not a CFCHC, a majority of whose Voting Equity Interests are owned by the Company or a Domestic Subsidiary.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including by Division, any sale and leaseback transaction, any casualty or condemnation or otherwise) of any property (including any Equity Interest), or part thereof, by any Person, and including any sale, assignment, transfer, forgiveness, write-off or other disposal, with or without recourse, of any Investment, notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interest” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 180 days after the Maturity Date, (b) is convertible into or exchangeable for debt securities (unless only occurring at the sole option of the issuer thereof), (c) (i) contains any repurchase obligation that may come into effect prior to, (ii) requires cash dividend payments (other than taxes) prior to, or (iii) provides the holders thereof with any rights to receive any cash upon the occurrence of a change of control or sale of assets prior to, in each case, the date that is 180 days after the Maturity Date; provided, however, that (i) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by the Company or one of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, resignation, death or disability and (ii) any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of an Equity Interest that is not a Disqualified Equity Interest, such Equity Interests shall not be deemed to be Disqualified Equity Interests and (iii) only the portion of such Equity Interests which so matures or is so mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Equity Interests.

“Division” means the creation of one or more new limited liability companies by means of any statutory division of a limited liability company pursuant to any applicable limited liability company act or similar statute of any jurisdiction. “Divide” shall have the corresponding meaning.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States (but excluding any territory or possession thereof).

“Dominion Trigger Period” means the period (a) commencing on the day that (i) an Event of Default occurs and is continuing or (ii) (1) on or prior to the date on which the Term Loan Obligations (other than contingent obligations which have not been asserted) are paid in full in cash, Availability is less than the greater of (x) 17.5% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$12,500,000, and (2) thereafter, Availability is less than the greater of (x) 12.5% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$7,000,000 and (b) continuing until the date that during the previous sixty (60) consecutive days, (i) no Event of Default has existed and (ii) (1) on or prior to the date on which the Term Loan Obligations (other than contingent obligations which have not been asserted) are paid in full in cash, Availability has been greater than the greater of (x) 17.5% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$12,500,000 and (2) thereafter, Availability has been greater than the greater of (x) 12.5% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$7,000,000; provided however, that a Dominion Trigger Period may not be cured as contemplated by clause (b) more than one (1) time in any fiscal year.

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

“Electronic Record” means a record created, generated, sent, communicated, received, or stored by electronic means.

“Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the Electronic Record.

“Eligible Accounts” means Accounts (other than Credit Card Receivables) due to a Borrower that are determined by the Administrative Agent, in its Credit Judgment, to be Eligible Accounts. Except as otherwise agreed by the Administrative Agent, none of the following shall be deemed to be Eligible Accounts:

(a) Accounts that are not fully earned by performance (or otherwise represent a progress billing or pre-billing) or not evidenced by an invoice which has been delivered to the applicable Account Debtor;

(b) (i) Accounts (other than those owing by Mattress Firm, Inc., Conn Appliances, Inc. (doing business as Conn’s Home Plus), Perez Mattress Co. (doing business as Mattress Firm), North Dakota Mattress Ventures LLC, OK Mattress Venture, D. Noblin, Inc. (doing business as Mattress Firm), Power of One LLC (doing business as Mattress Firm), Dakota Mattress Ventures LLC, JC Penny Company Inc., Mattress Warehouse, LLC, MORE FURNITURE FOR LESS, INC., Big Sky Mattress LLC, Sam’s Club, Hammacher Schlemmer, and their respective Affiliates) that have been outstanding for more than ninety (90) days from the invoice date or more than sixty (60) days past the original due date whichever comes first and (ii) Accounts owing by Mattress Firm, Inc., Conn Appliances, Inc. (doing business as Conn’s Home Plus), Perez Mattress Co. (doing business as Mattress Firm), North Dakota Mattress Ventures LLC, OK Mattress Venture, D. Noblin, Inc. (doing business as Mattress Firm), Power of One LLC (doing business as Mattress Firm), Dakota Mattress Ventures LLC, JC Penny Company Inc., Mattress Warehouse, LLC, MORE FURNITURE FOR LESS, INC., Big Sky Mattress LLC, Sam’s Club, Hammacher Schlemmer or any of their respective Affiliates that have been outstanding for more than one-hundred and twenty (120) days from the invoice date or more than ninety (90) days past the original due date whichever comes first;

(c) Accounts due from any Account Debtor, 50% of whose Accounts are otherwise ineligible under the terms clause (b) above;

(d) Accounts with respect to which (i) any representation or warranty set for in any Loan Document with respect thereto is not true and correct in all material respects, (ii) a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Permitted Liens described in clauses (a) and (o) of Section 8.02) or (iii) the applicable Account Debtor has not been instructed to (or does not in fact) remit payment to a deposit account of a Borrower subject to a Control Agreement;

(e) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, offset or chargeback;

(f) Accounts which (i) do not arise out of a sale of goods or rendition of services in the ordinary course of business, (ii) do not arise upon credit terms usual to the business of the Borrowers or (iii) are not payable in Dollars;

(g) Accounts (i) upon which a Borrower's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever, including cash on delivery and cash in advance transactions or (ii) as to which a Borrower is not able to bring suit or otherwise enforce its remedies against the related Account Debtor through judicial process;

(h) Accounts which are owed by (i) any other Loan Party or (ii) any Affiliate which is not a Loan Party;

(i) Accounts for which all material consents, approvals or authorizations of, or registrations or declarations with any Governmental Authority required to be obtained, effected or given in connection with the performance of such Account by the Account Debtor or in connection with the enforcement of such Account by the Administrative Agent have not been duly obtained, effected or given or are not in full force and effect;

(j) Accounts due from an Account Debtor which is the subject of any bankruptcy, insolvency or similar proceeding under any Debtor Relief Laws, has had a trustee or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;

(k) Accounts due from any Governmental Authority, except to the extent that the subject Account Debtor is the federal government of the United States of America and has complied with the Federal Assignment of Claims Act of 1940 and any similar state legislation;

(l) Accounts (i) owing from any Account Debtor that is also a supplier to or creditor of a Borrower unless such Person has waived any right of setoff in a manner reasonably acceptable to the Administrative Agent but only to the extent of the aggregate amount of such Borrower's liability to such Account Debtor, (ii) to the extent representing any manufacturer's or supplier's allowances, credits, discounts, incentive plans or similar arrangements entitling such Borrower to discounts on future purchase therefrom, (iii) to the extent constituting amounts owed with respect to loans or advances, or (iv) to the extent relating to payment of interest, fees or late charges;

(m) Accounts arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return, setoff or charge back;

(n) Accounts arising out of sales to any Account Debtor organized or having its principal office or substantially all assets outside the United States or Canada unless either (i) such Accounts are fully backed by an irrevocable letter of credit on terms, and issued by a financial institution, acceptable to the Administrative Agent and such irrevocable letter of credit is in the possession of the Administrative Agent, or (ii) such Accounts are supported by credit insurance on terms and from providers acceptable to the Administrative Agent, including naming the Administrative Agent as an additional insured and loss payee;

(o) Accounts that are evidenced by a judgment, Instrument or Chattel Paper;

(p) Accounts due from (i) an Account Debtor and its Affiliates (other than Mattress Firm, Inc. and its Affiliates), the aggregate of which Accounts due from such Account Debtor and its Affiliates represents more than 20% of all then outstanding Accounts owed to the Borrowers, but only to the extent of such excess and (ii) Mattress Firm, Inc. and its Affiliates, the aggregate of which Accounts due from Mattress Firm, Inc. and its Affiliates represents more than 50% of all then outstanding Accounts owed to the Borrowers, but only to the extent of such excess;

(q) Accounts that remain open after the applicable Account Debtor has made a partial payment in respect of the applicable invoice (whether or not the applicable Account Debtor has provided an explanation for such partial payment);

(r) Accounts where the applicable Account Debtor tendered a check or other item of payment in full or partial satisfaction and such check or other item of payment has been returned by the financial institution on which it is drawn; or

(s) Accounts for which payment has been received by the applicable Borrower but such payment has not been applied to the applicable Account.

“Eligible Assignee” means (a) a Lender or any of its Affiliates; (b) an Approved Fund; and (c) any other Person (other than a natural person) approved by (i) the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender (each such approval not to be unreasonably withheld or delayed), and (ii) unless an Event of Default has occurred and is continuing, the Borrower Agent (such approval not to be unreasonably withheld or delayed); provided that, notwithstanding the foregoing, “Eligible Assignee” shall not include a Loan Party or any of the Loan Parties’ Affiliates.

“Eligible Borrowing Base Assets” means all Eligible Inventory, Eligible Accounts, Eligible Credit Card Receivables, and Eligible In-Transit Inventory.

“Eligible Credit Card Receivables” means at the time of any determination thereof, each Credit Card Receivable that is acceptable and satisfies the criteria set forth below at the time of creation and continues to meet the same at the time of such determination, as determined by the Administrative Agent with respect to the Borrowing Base in its Credit Judgment, such Credit Card Receivable (i) has been earned by performance (including, delivery of product) and represents the bona fide amounts due to a Borrower from a Credit Card Issuer or Credit Card Processor, and in each case originated in the ordinary course of business of such Borrower, and (ii) in each case is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (j) below. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, such Credit Card Receivable shall indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Receivable shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower may be obligated to rebate to a customer, a Credit Card Issuer or Credit Card Processor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Credit Card Receivable but not yet applied by the Loan Parties to reduce the amount of such Credit Card Receivable. Except as otherwise agreed by the Administrative Agent in its Credit Judgment, any Credit Card Receivable included within any of the following categories shall not constitute an Eligible Credit Card Receivable:

(a) Credit Card Receivables which do not constitute a “payment intangible” (as defined in the UCC);

(b) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale;

(c) Credit Card Receivables (i) that are not subject to a perfected first-priority security interest in favor of the Administrative Agent, or (ii) with respect to which a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Permitted Liens described in clauses (a) or (o) of Section 8.02);

(d) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (but only to the extent of such claim, counterclaim, offset or chargeback);

(e) Credit Card Receivables as to which the Credit Card Issuer or Credit Card Processor has the right under certain circumstances to require a Loan Party to repurchase the Credit Card Receivables from such Credit Card Issuer or Credit Card Processor;

(f) Credit Card Receivables due from a Credit Card Issuer or Credit Card Processor which is the subject of any bankruptcy or insolvency proceedings or is a Sanctioned Person;

(g) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable Credit Card Issuer or Credit Card Processor with respect thereto;

(h) Credit Card Receivables which do not conform in all material respects to all representations, warranties or other provisions in the Loan Documents relating to Credit Card Receivables (or to the extent such representations, warranties or other provisions are qualified by materiality or Material Adverse Effect, then in all respects);

(i) Credit Card Receivables which the Administrative Agent in its Credit Judgment determines to be uncertain of collection due an adverse change in the financial condition or prospects of the Credit Card Issuer or Credit Card Processor obligated in respect of such Credit Card Receivables; or

(j) Credit Card Receivables acquired in a Permitted Acquisition, unless and until the Administrative Agent has completed or received (i) a Field Examination with respect to such Credit Card Receivables, and otherwise agrees in its Credit Judgment that such Credit Card Receivables shall be deemed Eligible Credit Card Receivables, and (ii) such other due diligence as the Administrative Agent may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent.

“Eligible In-Transit Inventory” means, as of any date of determination thereof, without duplication of other Eligible Inventory, Inventory:

(a) Which has been shipped from a vendor outside the continental United States for receipt by a Borrower within (x) at any time, other than during an In-Transit Trigger Period, fifty (50) days, and (y) during an In-Transit Trigger Period, thirty (30) days, in each case, of the date of determination, but which has not yet been delivered to a Borrower;

(b) For which the purchase order is in the name of a Borrower and title has passed to such Borrower;

(c) which is (i) subject to an imported goods agreement, customs broker agreement or similar agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which, among other things, the customs broker, logistics provider or other applicable third party having control over the Inventory agrees to act as agent and bailee for the benefit of the Administrative Agent and act solely upon the instructions of the Administrative Agent upon notice by the Administrative Agent and (ii) as to which the vendor has delivered a compliance letter reasonably satisfactory to the Administrative Agent;

(d) evidenced by (i) if an In-Transit Trigger Period is in effect and if required by the Administrative Agent, a tangible negotiable document of title, all originals of which have been delivered to the Administrative Agent or the applicable customs broker as agent for the Administrative Agent or (ii) if no In-Transit Trigger Period is in effect, a sea way bill of lading or similar document providing for the right to take possession of the Inventory, in each case under clauses (i) and (ii) above, that reflects a Borrower as consignee or, if requested by the Administrative Agent after the occurrence of an Event of Default, names the Administrative Agent as consignee;

(e) as to which no vendor has asserted any right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory, or with respect to whom any Borrower is in default of any obligations;

(f) which is shipped by a common carrier that is not affiliated with the vendor;

(g) which is insured to the reasonable satisfaction of the Administrative Agent; and

(h) which otherwise would constitute Eligible Inventory.

“Eligible Inventory” means Inventory of a Borrower that is determined by the Administrative Agent, in its Credit Judgment, to be Eligible Inventory. Except as otherwise agreed by the Administrative Agent, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto;

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(b) Inventory that does not consist of (i) finished goods readily saleable in the Ordinary Course of Business, or (ii) raw materials;

(c) Inventory that does not comply with each of the covenants, representations and warranties respecting Inventory made by the Borrowers in the Loan Documents;

(d) Inventory that is leased by or is on consignment to a Borrower;

(e) Inventory that is not located in the United States of America (excluding territories or possessions of the United States);

(f) Inventory that is not at a location that is owned by a Borrower, provided, however, that Inventory that is located on leased premises or in the possession of a warehouseman, bailee, processor, repairman, mechanic or similar other Person in the ordinary course of business shall not be excluded from Eligible Inventory under this clause (f) so long as the lessor or such Person possessing such Inventory has delivered a Lien Waiver to the Administrative Agent or, if elected by the Administrative Agent, an appropriate Rent and Charges Reserve has been established;

(g) Inventory held at any location (owned or a third-party location) with an aggregate Cost of Inventory at such location of less than \$40,000, unless approved by the Administrative Agent;

(h) Inventory that is in transit, except between locations of Borrowers (or between locations of Borrowers and processors or vendors in the Ordinary Course of Business);

(i) Inventory that is comprised of goods which (i) are damaged, defective, “seconds” or otherwise unmerchantable, (ii) have been returned or are to be returned to the vendor or (iii) are discontinued products, obsolete or slow moving;

(j) Inventory consisting of spare parts;

(k) Inventory consisting of promotional, marketing, packaging and shipping materials or supplies used or consumed in the Borrowers’ business and other similar non-merchandise categories;

(l) Inventory that is not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale;

(m) Inventory that is subject to any warehouse receipt, bill of lading or negotiable Document that has not been issued to or in the name of the Administrative Agent;

(n) Inventory consisting of or containing Hazardous Materials;

(o) Inventory that is not subject to a perfected first priority Lien in favor of the Administrative Agent (subject only to Permitted Liens set forth in clauses (c), (d), or (n) of Section 8.02 hereof);

(p) Inventory that is not insured in compliance with the provisions of this Agreement and the other Loan Documents;

(q) Inventory not on a perpetual schedule;

(r) Inventory that consists of bill and hold goods or goods that have been sold but not yet delivered; or

(s) Inventory that is subject to any License or other arrangement that restricts such Borrowers' or the Administrative Agent's right to dispose of such Inventory, unless (i) Administrative Agent has received an appropriate Lien Waiver; and (ii) such Borrowers have not received notice of a dispute in respect of any such License or other arrangement.

"Environmental Laws" means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of a Loan Party or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, (a) all of the shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person, (b) all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person, (c) all of the securities convertible into or exchangeable for (i) shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person or (ii) warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person, and (d) all of the other ownership, control or profit interests in such Person, whether voting or nonvoting, and whether or not such shares, units, 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 any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(3) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

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

“Event of Default” has the meaning specified in Section 9.01.

“Exchange Act” means the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

“Excluded Deposit Account” means (a) Trust Accounts, (b) zero balance disbursement accounts and (c) other Deposit Accounts maintained in the Ordinary Course of Business containing cash amounts that do not exceed at any time \$100,000 in the aggregate for all such accounts under this clause (c).

“Excluded Equity Interests” means (a) any of the outstanding Voting Equity Interests of any CFC or CFCHC that is a Direct Foreign Subsidiary of a Loan Party in excess of 65% of all the Voting Equity Interests of such CFC or CFCHC, (b) any Voting Equity Interests of any CFC or CHCHC that is not a Direct Foreign Subsidiary of a Loan Party, and (c) the Equity Interests of a Subsidiary that is not a wholly-owned Subsidiary the pledge of which would violate a contractual obligation to the owners of the other Equity Interests of such Subsidiary (other than any such owners that are the Company or Affiliates of the Company) that is binding on or relating to such Equity Interests, or the applicable organizational documents, joint venture agreement or shareholders’ agreement of such Subsidiary.

“Excluded Real Property” means (a) any fee-owned Real Property of a Loan Party with a purchase price of less than \$1,000,000 individually, and (b) any Real Property with respect to which, in the Credit Judgment of the Administrative Agent, the cost (including as a result of adverse tax consequences) of providing a Mortgage shall be excessive in view of the benefits to be obtained by the Lenders.

“Excluded Receipts” means cash received by any Loan Party or any of their Subsidiaries directly from any of the events listed on Schedule 1.03 hereto.

“Excluded Subsidiary” means (a) any Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code (a “CFC”), (b) any Subsidiary that owns no material assets other than the Capital Stock or indebtedness of one or more CFCs and/or one or more CFCHCs (a “CFCHC”) and (c) any direct or indirect Subsidiary of any CFC or CFCHC.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Loan Party or the grant of such Lien becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or Lien is or 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 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 (other than pursuant to an assignment request by the Borrower Agent under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), 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 3.01(e) and (d) any withholding Taxes imposed pursuant to FATCA.

“Existing Agreement” means that certain Credit Agreement dated as of September 3, 2020, among the Borrower, Holdings, Keybank National Association, as administrative agent, and a syndicate of lenders, as amended through the Closing Date.

“Extraordinary Expenses” means all costs, expenses, liabilities or advances that Administrative Agent may incur or make during a Default or Event of Default, or during the pendency of an proceeding of any Loan Party under any Debtor Relief Laws, including those relating to (a) any audit, inspection, 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 Loan Party, any representative of creditors of a Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Administrative Agent'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 proceeding applicable to any Loan Party under any Debtor Relief Laws; (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 modification, waiver, 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, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Loan Party or independent contractors in liquidating any Collateral, and travel expenses.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Facility” means the Revolving Credit Facility.

“Facility Termination Date” means the date as of which Payment in Full has occurred.

“Fair Market Value” means, with respect to any asset or any group of assets, as of any date of determination, the value of the consideration obtainable in a sale of such assets at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time giving regard to the nature and characteristics of such asset.

“FCPA” means the U.S. Foreign Corrupt Practices Act.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to BMO on such day on such transactions as determined by the Administrative Agent (and if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

“Fee Letter” means the letter agreement, dated as of the Closing Date among the Company and the Administrative Agent.

“Field Exam” means any visit and inspection of the properties, assets and records of any Loan Party during the term of this Agreement, which shall include access to such properties, assets and records sufficient to permit the Administrative Agent or its representatives to examine, audit and make extracts from any Loan Party's books and records, make examinations and audits of any Loan Party's other financial matters and Collateral as Administrative Agent deems appropriate in its Credit Judgment, and discussions with its officers, employees, agents, advisors and independent accountants regarding such Loan Party's business, financial condition, assets, prospects and results of operations.

“Field Exam Trigger Event” means Availability is less than (x) on or prior to the date on which the Term Loan Obligations (other than contingent obligations which have not been asserted) are paid in full in cash the greater of (a) 20.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (b) \$15,000,000, and (y) thereafter,

the greater of (a) 15.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (b) \$10,000,000.

“FIRREA” means The Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

“Fixed Charge Trigger Period” means the period (a) commencing on the day that Availability is less than the greater of (i) 15.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (ii) \$7,500,000 and (b) continuing until the date that during the previous thirty (30) consecutive days, Availability has been greater than the greater of (i) 15.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (ii) \$7,500,000 at all times during such period.

“Floor” means a rate of interest equal to 0.00%.

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

“Foreign Lender” means (a) if the applicable Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the applicable Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Fronting Exposure” means, at any time there is a Defaulting Lender that is a Revolving Credit Lender, (a) with respect to the Letter of Credit Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding Letter of Credit Obligations other than Letter of Credit Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Credit Lenders or Cash Collateralized in accordance with the terms hereof, (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Credit Lenders and (c) with respect to the Administrative Agent, such Defaulting Lender’s Applicable Percentage of Protective Advances other than Protective Advances as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Credit Lenders.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

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

“Guarantee” means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any debt obligation, payment or performance of any other Person (the “primary obligor”), or otherwise agreeing to provide funds for payment or performance of the debt or other obligations of the primary obligor in any manner, whether directly or indirectly, and including any obligation of any 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 of a primary obligor, (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) Lien on any assets of such Person securing any debt or other obligation of any primary obligor, 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 or other obligation 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” as a verb has a corresponding meaning.

“Guarantor” means each Person who executes or becomes a party to this Agreement as a guarantor pursuant to Article XII or otherwise executes and delivers a guaranty agreement reasonably acceptable to the Administrative Agent guaranteeing any of the Obligations.

“Guarantor Payment” has the meaning specified in Section 2.15(c).

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Holdings” has the meaning specified in the introductory paragraph hereof.

“Honor Date” has the meaning specified in Section 2.03(c)(i).

“Illegality Notice” has the meaning specified in Section 3.02.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments or upon which interest is customarily paid;

(b) all direct or contingent obligations of such Person arising under or in respect of letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and other financial products and services (including treasury management and commercial credit card, merchant card and purchase or procurement card services);

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable arising in the Ordinary Course of Business being paid on a timely basis and consistent with past practices) and any accrued and unpaid obligations with respect to earnout payments or similar payments under Acquisition documents;

(e) indebtedness secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) obligations under Capital Leases and Synthetic Lease Obligations of such Person;

(g) all obligations of such Person with respect to the redemption, repayment or other repurchase or payment in respect of any Disqualified Equity Interest; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, to the extent such Indebtedness is recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“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 Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Insolvency Event” means, with respect to any Person:

(a) the commencement of: (i) a voluntary case by such Person under the Bankruptcy Code or (ii) the seeking of relief by such Person under other Debtor Relief Laws;

(b) the commencement of an involuntary case or proceeding against such Person under the Bankruptcy Code or other Debtor Relief Laws and the petition or other filing is not controverted or dismissed within sixty (60) days after commencement of the case or proceeding;

(c) a custodian (as defined in the Bankruptcy Code or equal term under any other Debtor Relief Law, including a receiver, interim receiver, receiver manager, trustee or monitor) is appointed for, or takes charge of, all or substantially all of the property of such Person;

(d) such Person commences (including by way of applying for or consenting to the appointment of, or the taking charge by, a rehabilitator, receiver, interim receiver, custodian, trustee, monitor, conservator or liquidator (or any equal term under any other Debtor Relief Laws) (collectively, a “conservator”) of such Person or all or any substantial portion of its property) any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, liquidation, rehabilitation, conservatorship or similar law of any jurisdiction whether now or hereafter in effect relating to such Person;

(e) such Person is adjudicated by a court of competent jurisdiction to be insolvent or bankrupt;

(f) any order of relief or other order approving any such case or proceeding referred to in clauses (a) or (b) above is entered;

(g) such Person suffers any appointment of any conservator or the like for it or any substantial part of its property that continues undischarged or unstayed for a period of sixty (60) days; or

(h) such Person makes a compromise, arrangement or assignment for the benefit of creditors or generally does not pay its debts as such debts become due.

“Intellectual Property” means all past, present and future: trade secrets, know-how and other proprietary information; trademarks, uniform resource locations (URLs), internet domain names, service marks, sound marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights (including copyrights for computer programs) and copyright registrations or applications for registrations which have heretofore been or may hereafter be issued throughout the world and all tangible property embodying the copyrights, unpatented inventions (whether or not patentable); patent applications and patents; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

“Intercreditor Agreement” means that certain intercreditor agreement between the Administrative Agent, and the Term Loan Agent, and acknowledged by the Loan Parties dated as of the date hereof and in form and substance reasonably acceptable to the Administrative Agent.

“Interest Payment Date” means (a) as to any SOFR Loan, (i) the last day of each Interest Period applicable to such SOFR Loan; provided that if any Interest Period for a SOFR Loan is greater than three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates, (ii) any date that such Loan is prepaid or converted, in whole or in part, and (iii) the Maturity Date; and (b) as to any Base Rate Loan (including a Swing Line Loan), (i) the first day of each month with respect to interest accrued through the last day of the immediately preceding month, (ii) any date that such Loan is prepaid or converted, in whole or in part, and (iii) the Maturity Date; provided, further, that interest accruing at the Default Rate shall be payable from time to time upon demand of the Administrative Agent.

“Interest Period” means, as to each SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending, in each case, on the date one, three or six months thereafter (in each case, and subject to the availability thereof) as selected by the Borrower Agent in its Committed Loan Notice; provided that:

(a) any Interest Period that would otherwise 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;

(b) 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 end on the last Business Day of the calendar month at the end of such Interest Period;

(c) no Interest Period shall extend beyond the Maturity Date; and

(d) no tenor that has been removed from this definition pursuant to Section 3.03(b)(iv) below shall be available for specification in a Committed Loan Notice.

“In-Transit Trigger Period” means the period commencing on the day, as reasonably determined by the Administrative Agent, that (a) on or prior to the date on which the Term Loan Obligations (other than contingent obligations which have not been asserted) are paid in full in cash, Availability is less than the greater of (x) 20.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$15,000,000, and (2) thereafter, Availability is less than the greater of (x) 15.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$8,500,000, or (b) an Event of Default has occurred. The occurrence of an In-Transit Trigger Period shall be deemed continuing until (i) such date as such Event of Default shall no longer be continuing or (ii) such date as Availability has been equal to or greater than any amount described in the foregoing clause (a) for sixty (60) consecutive days, in which event (so long as no intervening Event of Default has occurred) an In-Transit Trigger Period shall no longer be deemed to be continuing.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) an Acquisition with respect to another Person or (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person. For purposes of compliance with Section 8.03, the amount of any Investment (i) shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less all returns of principal or equity thereon (and without adjustment by reason of the financial condition of such other Person), (ii) if made by the transfer or exchange of property other than cash, shall be deemed to be the original principal or capital amount equal to the Fair Market Value of such property at the time of such transfer or exchange and (iii) if made in the form of a Guaranty or acquisition or assumption of Indebtedness, shall be deemed the maximum principal amount of such Indebtedness or maximum value of the obligation Guaranteed when made, as applicable.

“Investment Affiliate” means (a) Blackwell Partners LLC – Series A, solely with respect to any securities managed by a Permitted Holder pursuant to an investment management agreement which grants control to a Permitted Holder and (b) any fund or

investment vehicle that (i) is organized by a Permitted Holder for the purpose of making equity or debt investments in one or more companies and (ii) is controlled by, or under common control with, such Permitted Holder. For purposes of this definition ‘control’ means the power to direct or cause the direction of management and policies of a Person whether by contract or otherwise.

“IP Rights” rights of any Person to use any Intellectual Property.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the Letter of Credit Issuer and any Borrower (or any Subsidiary) or in favor the Letter of Credit Issuer and relating to any such Letter of Credit.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” has the meaning specified in the introductory paragraph hereto and includes the Swing Line Lender and, as the context indicates in order to reflect customary market practice or the intent of the parties, the Letter of Credit Issuer.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower Agent and the Administrative Agent.

“Letter of Credit” means (a) any standby or documentary letter of credit issued by a Letter of Credit Issuer or (b) any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support, in any case, issued by the Administrative Agent or a Letter of Credit Issuer pursuant to this Agreement for the benefit of a Borrower (or any other Loan Party or Domestic Subsidiary thereof as to which all “know your customer” or other similar requirements have been satisfied)

“Letter of Credit Advance” means each Revolving Credit Lender’s funding of its participation in any Letter of Credit Borrowing in accordance with its Applicable Revolving Credit Percentage. All Letter of Credit Advances shall be denominated in Dollars.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Letter of Credit Issuer.

“Letter of Credit Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date (or, if such day is not a Business Day, the preceding Business Day).

“Letter of Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“Letter of Credit Fees” means, collectively or individually as the context may indicate, the fees with respect to Letters of Credit described in Section 2.09(b).

“Letter of Credit Issuer” means each of BMO and any other Lender approved by the Administrative Agent and the Borrower, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. At any time there is more than one Letter of Credit Issuer, all singular references to the Letter of Credit Issuer shall mean any Letter of Credit Issuer, either Letter of Credit Issuer, each Letter of Credit Issuer, the Letter of Credit Issuer that has issued the applicable Letter of Credit, or both Letter of Credit Issuers, as the context may require.

“Letter of Credit Obligations” means, as at any date of determination, (a) the aggregate undrawn amount of all outstanding Letters of Credit, plus (b) the aggregate of all Unreimbursed Amounts, including all Letter of Credit Borrowings, plus (c) the aggregate amount of all accrued and unpaid Letter of Credit Fees. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. For all purposes of this Agreement, if on any date of determination 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.

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Aggregate Revolving Credit Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Credit Commitments.

“License” means any license or agreement under which a Loan Party is granted IP Rights in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of assets or property or any other conduct of its business.

“Licensor” means any Person from whom a Loan Party obtains IP Rights.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest, or any preference, priority or other security agreement or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Lien Waiver” means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, by which (a) for any Collateral located on leased premises or owned premises subject to a mortgage, the lessor or mortgagee, as applicable, agrees to, among other things, waive or subordinate any Lien it may have on the Collateral and permit the Administrative Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for the Administrative Agent, and agrees to deliver the Collateral to the Administrative Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Administrative Agent’s Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Administrative Agent upon request; and (d) for any Collateral subject to a Licensor’s IP Rights, the Licensor grants to the Administrative Agent the right, vis-à-vis such Licensor, to enforce the Administrative Agent’s Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

“Loan” means an extension of credit under Article II in the form of a Revolving Credit Loan, a Protective Advance or a Swing Line Loan.

“Loan Account” has the meaning assigned to such term in Section 2.11(a).

“Loan Documents” means this Agreement, each Note, each Security Instrument, each Committed Loan Notice, Swing Line Loan Notice, each Issuer Document, each Borrowing Base Certificate, each Compliance Certificate, the Intercreditor Agreement, the Fee Letter, any agreement creating or perfecting rights in Cash Collateral securing any Obligation hereunder and all other instruments and documents heretofore or hereafter executed or delivered to or in favor of any Lender or the Administrative Agent in connection with the Loans made and transactions contemplated by this Agreement, but excluding, for the avoidance of doubt, Credit Product Arrangements.

“Loan Obligations” means all Obligations other than amounts (including fees) owing by any Loan Party pursuant to any Credit Product Arrangements.

“Loan Parties” means the Borrowers and each Guarantor.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or condition (financial or otherwise) of either (i) the Borrowers, taken as a whole or (ii) Holdings and its Subsidiaries, taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party or on the ability of the Administrative Agent to collect any Obligation or realize upon any material portion of the Collateral.

“Material Contract” means any agreement or arrangement to which a Loan Party or Subsidiary is party (other than the Loan Documents) (a) that is deemed to be a material contract under any securities laws applicable to such Loan Party, including the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that relates to Subordinated Debt or the Term Loan Obligations, or to other Indebtedness in an aggregate principal amount of \$500,000 or more.

“Material License” has the meaning assigned to such term in Section 7.15.

“Material Third-Party Agreement” has the meaning assigned to such term in Section 7.17(a).

“Maturity Date” means August 7, 2026.

“Maximum Borrowing Amount” means the lesser of (A) the Aggregate Revolving Credit Commitments and (B) the Borrowing Base.

“Measurement Period” means, at any date of determination, the most recently completed trailing twelve month period of Holdings and its Subsidiaries for which financial statements have or should have been delivered in accordance with Section 7.01(a), 7.01(b) or 7.01(c); provided that for the period ending (i) August 31, 2023, the Measurement Period means, at such date of determination, the one month period ending on such date, (ii) September 30, 2023, the Measurement Period means, at such date of determination, the two month period ending on such date, (iii) October 31, 2023, the Measurement Period means, at such date of determination, the three month period ending on such date, (iv) November 30, 2023, the Measurement Period means, at such date of determination, the four month period ending on such date, (v) December 31, 2023, the Measurement Period means, at such date of determination, the five month period ending on such date, (vi) January 31, 2024, the Measurement Period means, at such date of determination, the six month period ending on such date, (vii) February 29, 2024, the Measurement Period means, at such date of determination, the seven month period ending on such date, (viii) March 31, 2024, the Measurement Period means at such date of determination, the eight month period ending on such date, (ix) April 30, 2024, the Measurement Period means, at such date of determination, the nine month period ending on such date, (x) May 31, 2024, the Measurement Period means, at such date of determination, the ten month period ending on such date, and (xi) June 30, 2024, the Measurement Period means, at such date of determination, the eleven month period ending on such date, in each case of Holdings and its Subsidiaries.

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or Deposit Account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the Letter of Credit Issuer with respect to Letters of Credit issued and outstanding at such time plus 105% of the Fronting Exposure of the Administrative Agent with respect to Protective Advances outstanding at such time, and (b) with respect to Cash Collateral consisting of cash or Deposit Account balances provided in accordance with the provisions of Section 2.16(a)(i) or 2.16(a)(ii), an amount equal to 105% of the Outstanding Amount of all Letter of Credit Obligations, and (c) with respect to any other Letter of Credit Obligations, an amount determined by the Administrative Agent and the Letter of Credit Issuer in their sole discretion.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage Related Documents” means, with respect to any Real Property subject to a Mortgage, the following, in form and substance satisfactory to the Administrative Agent and received by the Administrative Agent for review at least 15 days prior to the effective date of the Mortgage: (a) an ALTA mortgagee title policy (or binder therefor) covering the Administrative Agent’s interest under the Mortgage, in a form and amount and by an insurer acceptable to the Administrative Agent, which must be fully paid on such effective date; (b) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as the Administrative Agent may require with respect to other Persons having an interest in the Real Property; (c) an ALTA Survey by a licensed surveyor

acceptable to the Administrative Agent; (d) a life-of-loan flood hazard determination and, if the Real Property is located in a flood plain, an acknowledged notice to borrower and flood insurance in an amount, on terms, including endorsements, and by an insurer, in each case, acceptable to the Administrative Agent; (e) a current appraisal of the Real Property, prepared by an appraiser acceptable to the Administrative Agent, and in form and substance satisfactory to Required Lenders; (f) an environmental assessment, prepared by environmental engineers acceptable to the Administrative Agent, and accompanied by such reports, certificates, studies or data as the Administrative Agent may reasonably require, which shall all be in form and substance satisfactory to Required Lenders; and (g) an environmental indemnity agreement and such other documents, instruments or agreements as the Administrative Agent may reasonably require with respect to any environmental risks regarding the Real Property.

“Mortgaged Property” means (a) the Real Property of the Loan Parties listed on Schedule 1.02 hereto and (b) Real Property, other than Excluded Real Property, required from time to time to be subject to a Mortgage pursuant to the terms of the Loan Documents.

“Mortgages” means the mortgages, leasehold mortgages, deeds of trust, leasehold deeds of trust or deeds to secure debt executed by a Loan Party on or about the Closing Date, or from time to time thereafter as may be required under the Loan Documents, in favor of the Administrative Agent, for the benefit of the Secured Parties, by which such Loan Party has granted to the Administrative Agent, as security for the Obligations, a Lien upon the Mortgaged Property described therein, together with all mortgages, deeds of trust and comparable documents now or at any time hereafter securing the whole or any part of the Obligations.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(4) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including any Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means

(a) with respect to the Disposition of any asset of any Loan Party or any Subsidiary, the excess, if any, of (i) the sum of the cash and cash equivalents received in connection with such Disposition (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by such asset and that is required to be repaid in connection with the Disposition thereof (other than Indebtedness under the Loan Documents and Indebtedness owing to such Loan Party or any Subsidiary), (B) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary in connection with such Disposition, including any brokerage commissions, underwriting fees and discount, legal fees, finder’s fees and other similar fees and commissions, (C) taxes paid or reasonably estimated to be payable by the Loan Party or any Subsidiary in connection with the relevant Disposition, (D) the amount of any reasonable reserve required to be established in accordance with GAAP against liabilities (other than taxes deducted pursuant to clause (C) above) to the extent such reserves are (x) associated with the assets that are the object of such Disposition and (y) retained by such Loan Party or applicable Subsidiary, and (E) the amount of any reasonable reserve for purchase price adjustments and retained fixed liabilities reasonably expected to be payable by such Loan Party or applicable Subsidiary in connection therewith to the extent such reserves are (1) associated with the assets that are the object of such Disposition and (2) retained by such Loan Party or applicable Subsidiary; provided that the amount of any subsequent reduction of any reserve provided for in clause (D) or (E) above (other than in connection with a payment in respect of such liability) shall (X) be deemed to be Net Cash Proceeds of such Disposition occurring on the date of such reduction, and (Y) immediately be applied to the prepayment of Loans in accordance with Section 2.06(c); and

(b) with respect to any issuance of Indebtedness or Equity Interests by any Loan Party or any Subsidiary, the excess, if any, of (i) the sum of the cash and cash equivalents received in connection with such issuance over (ii) the sum of (A) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary in connection with such issuance, including any brokerage commissions,

underwriting fees and discount, legal fees, and other similar fees and commissions and (B) taxes paid or payable to the applicable taxing authorities by the Loan Party or any Subsidiary in connection with and at the time of such issuance.

“NOLV” means with respect to the Borrowers’ Inventory, the orderly liquidation value of such Inventory (a percentage of the Cost of such Inventory) and with respect to the Borrower’s equipment, the orderly liquidation value of such Equipment, in each case, that might be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from time to time by reference to the most recent appraisal received by the Administrative Agent conducted by an independent appraiser engaged by the Administrative Agent.

“Non-Consenting Lender” has the meaning assigned to such term in Section 11.01(d).

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

“Non-Extension Notice Date” has the meaning specified in Section 2.03(b)(iii).

“Note” means a promissory note made by the Borrowers in favor of a Revolving Credit Lender evidencing Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form of Exhibit A.

“NPL” means the National Priorities List pursuant to CERCLA, as updated from time to time.

“Obligations” means (a) all amounts owing by any Loan Party to the Administrative Agent, any Lender or any other Secured Party pursuant to or in connection with this Agreement or any other Loan Document or otherwise with respect to any Loan or Letter of Credit, including all Letter of Credit Obligations, and including all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any proceeding under any Debtor Relief Law relating to any Loan Party, or would accrue but for such filing or commencement, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement obligations, indemnification and reimbursement payments, fees, costs and expenses (including all fees, costs and expenses of counsel to the Administrative Agent) incurred in connection with this Agreement or any other Loan Document, whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, together with all renewals, extensions, modifications or refinancings thereof and (b) Credit Product Obligations; provided, that Obligations of a Loan Party shall not include its Excluded Swap Obligations.

“OFAC” means the United States Department of Treasury Office of Foreign Assets Control.

“OFAC SDN List” means the list of the Specially Designated Nationals and Blocked Persons maintained by OFAC.

“Ordinary Course of Business” means the ordinary course of business of the Company and its Subsidiaries, consistent with past practices and undertaken in good faith.

“Organization 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 operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any 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 and, if applicable, any certificate or articles of formation or organization of such entity; and (d) with respect to any of the foregoing, each shareholder agreement, member agreement, agreement among partners or limited partners, stock designation, equity holder agreement or other agreement among or affecting rights of holders of Equity Interests issued by any Loan Party and which such Loan Party is a party to.

“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 11.13).

“Outstanding Amount” means (a) with respect to Revolving Credit Loans, Protective Advances and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and any prepayments or repayments of Revolving Credit Loans, Protective Advances or Swing Line Loans occurring on such date; and (b) with respect to any Letter of Credit Obligations on any date, (i) the aggregate outstanding amount of such Letter of Credit Obligations on such date after giving effect to any Letter of Credit Extension occurring on such date plus and any other changes in the aggregate amount of the Letter of Credit Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts and all Letter of Credit Borrowings on such date.

“Overadvance” has the meaning given to such term in Section 2.01(c)(i)(A).

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

“Overnight Rate” means, for any day and from time to time as in effect, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent, the Letter of Credit Issuer, or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation.

“Participant” has the meaning assigned to such term in Section 11.06(d).

“Participant Register” has the meaning assigned to such term in Section 11.06(d).

“Patent Security Agreement” means any patent security agreement pursuant to which a Loan Party assigns to Administrative Agent, for the benefit of the Secured Parties, such Person’s interests in its patents, as security for the Obligations.

“PATRIOT Act” means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“Payment Conditions” means, with respect to any Specified Transaction, the satisfaction of the following conditions:

(a) as of the date of any such Specified Transaction and immediately after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(b) (x) on or prior to the date on which the Term Loan Obligations (other than contingent obligations which have not been asserted) are paid in full in cash, Availability (after giving Pro Forma Effect to such Specified Transaction) during the ninety (90) consecutive day period ending on and including the date of such Specified Transaction and during the ninety (90) consecutive day period immediately after the date of such Specified Transaction shall be not less than the greater of (A) 25.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) and (B) \$15,000,000, as of such date, and (y) thereafter, Availability (after giving Pro Forma Effect to such Specified Transaction) during the ninety (90) consecutive day period ending on and including the date of such Specified Transaction shall be not less than (i) in the case of a Specified Restricted Payment or Specified Debt Payment, the greater of (A) 20.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) and (B) \$10,000,000, or (ii) in the case of a Specified Investment, the greater of (A) 15.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) and (B) \$7,500,000, in each case, as of such date;

(c) the Consolidated Fixed Charge Coverage Ratio as of the end of the most recently ended Measurement Period prior to the making of such Specified Transaction, calculated on a Pro Forma Basis, shall be equal to or greater than 1.00 to 1.00;

(d) the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower Agent certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby; and

(e) such Specified Transaction shall occur after August 7, 2024.

“Payment in Full” means (a) the payment in full in cash of all Obligations (other than contingent Obligations for which no claim has been asserted), together with all accrued and unpaid interest and fees thereon, other than (i) Credit Product Obligations and (ii) Letter of Credit Obligations that have been fully Cash Collateralized in an amount equal to 105% of the amount thereof or as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the Letter of Credit Issuer shall have been made, (b) the Commitments shall have terminated or expired, (c) the obligations and liabilities (other than contingent obligations for which no claim has been asserted) of each Loan Party and its Affiliates under all Credit Product Arrangements shall have been paid and satisfied in full and the Credit Product Arrangements shall have expired or been terminated, or other arrangements satisfactory to the applicable Credit Product Providers shall have been made with respect thereto, and (d) all claims of the Loan Parties against any Secured Party arising on or before the satisfaction of the conditions set forth in clauses (a), (b) and (c) above, shall have been released on terms acceptable to the Administrative Agent or the applicable Credit Product Providers; provided that notwithstanding full payment or Cash Collateralization of the Obligations as provided herein, the Administrative Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages the Administrative Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Administrative Agent receives (i) a written agreement, executed by Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying Agent and Lenders from any such damages; or (ii) such Cash Collateral as the Administrative Agent, in its discretion, deems necessary to protect against any such damages.

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

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by any Loan Party and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” means any Acquisition by a Loan Party with respect to which:

(a) the Person to be (or whose assets are to be) acquired does not oppose such Acquisition and the line or lines of business of the Person to be acquired constitute Core Businesses and had positive EBITDA for the 12 month period most recently ended;

(b) after giving effect to such Acquisition on a Pro Forma Basis and the costs related thereto (including cash and other property (other than Equity Interests or options to acquire Equity Interests of any Loan Party) given as consideration, any Indebtedness incurred, assumed or acquired by any Loan Party or any Subsidiary in connection with such Acquisition, all additional purchase price amounts in the form of earnouts and other contingent obligation calculated at the maximum amount thereof, and all fees expenses and transaction costs incurred in connection therewith), the Payment Conditions shall have been met with respect thereto;

(c) the Borrower Agent shall have furnished to the Administrative Agent at least five (5) Business Days prior to the date on which any such Acquisition is to be consummated or such shorter time as Administrative Agent may allow, a certificate of a Responsible Officer of the Borrower Agent, in form and substance reasonably satisfactory to the Administrative Agent, (i) certifying that all of the requirements set forth above will be satisfied on or prior to the consummation of such Acquisition and (ii) a reasonably detailed

calculation of item (b) above (and such certificate shall be updated as necessary to make it accurate as of the date the Acquisition is consummated); and

(d) The Borrower Agent shall have furnished the Administrative Agent with ten (10) days' prior written notice of such intended Acquisition and shall have furnished the Administrative Agent with a current draft of the applicable acquisition documents (and final copies thereof as and when executed), and to the extent available, appropriate financial statements of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and, to the extent available, such other information as the Administrative Agent may reasonably request.

“Permitted Holder” means Coliseum Capital Management, LLC and its Investment Affiliates.

“Permitted Liens” has the meaning specified in Section 8.02.

“Permitted Tax Distributions” means for any taxable period in which a Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of such Borrower is the common parent (a “Tax Group”), distributions by such Borrower to such direct or indirect parent of such Borrower to pay federal, foreign, state and local income Taxes of such Tax Group that are attributable to the taxable income of the Borrower and/or its Subsidiaries; *provided* that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that such Borrower and the Subsidiaries would have been required to pay as a stand-alone Tax Group, reduced by any portion of such income Taxes directly paid by such Borrower or any of its Subsidiaries.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan, but excluding a Multiemployer Plan), maintained for employees of any Loan Party or any ERISA Affiliate or any such Plan to which any Loan Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 7.02.

“Post-Closing Agreement” means that certain Post-Closing Agreement by and between the Borrower Agent and the Administrative Agent dated as of the Closing Date with respect to the satisfaction after the Closing Date of certain collateral matters.

“Priority Swap Obligations” means Credit Product Obligations under Swap Contracts (a) owing to BMO or its Affiliates (so long as BMO (in its discretion) shall have established a Credit Product Reserve with respect thereto) or (b) owing to any other Credit Product Provider and expressly identified as “Priority Swap Obligations” in a Credit Product Notice from the Borrower Agent and such Credit Product Provider to the Administrative Agent (which at all times shall be subject to a Credit Product Reserve).

“Pro Forma Adjustment” means, for the purposes of calculating Consolidated EBITDA for any Measurement Period, if at any time during such Measurement Period, Holdings or any of its Subsidiaries shall have made a Permitted Acquisition or Disposition, Consolidated EBITDA for such Measurement Period shall be calculated after giving pro forma effect thereto as if any such Permitted Acquisition or Disposition occurred on the first day of such Measurement Period, including (a) with respect to an any Permitted Acquisition, inclusion of the actual historical results of operation of such acquired Person or line of business during such Measurement Period and (b) with respect to any Disposition, exclusion of the actual historical results of operations of the disposed of Person or line of business or assets during such Measurement Period.

“Pro Forma Basis,” “Pro Forma Compliance” and “Pro Forma Effect” means, with respect to compliance with any applicable test, financial ratio or covenant hereunder, that (without duplication):

(a) the Pro Forma Adjustment shall have been made, to the extent applicable;

(b) all Specified Pro Forma Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made (the period beginning on the first day of such period of measurement and continuing until the date of the consummation of such event, the “Reference Period”) shall be deemed to have occurred as of the first day of the applicable Reference Period; provided that (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Pro Forma Transaction, (A) shall be excluded in the case of a Disposition of all or substantially all Equity Interests in or assets of any Loan Party or its Subsidiaries or any division, product line, or facility used for operations of the Loan Parties or their Subsidiaries, and (B) shall be included in the case of a Permitted Acquisition or Investment described in the definition of Specified Pro Forma Transaction, and (ii) all Indebtedness issued, incurred or assumed as a result of, or to finance, any Specified Pro Forma Transaction or permanently repaid in connection with any Specified Pro Forma Transaction during the Reference Period shall be deemed to have been issued, incurred, assumed or permanently repaid at the beginning of such Reference Period (with interest expense of such Person attributable to any Indebtedness for which pro forma effect is being given as provided in preceding clause (ii) that has a floating or formula rate, shall have an implied rate of interest for the applicable Reference Period determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination); provided, that, the foregoing pro forma adjustments may be applied to any such test, financial ratio or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and the definition of Pro Forma Adjustment;

(c) with respect to any calculation of Availability on a pro forma basis (i) for any Specified Transaction and the related specified period or specified date or time hereunder, the determination of Availability shall be made giving pro forma effect to all Credit Extensions to be made in connection with the consummation of such Specified Transactions as if made hereunder on the first day of the period being tested and remaining outstanding through and including the date of consummation of such Specified Transactions and (ii) for any Permitted Acquisition, the calculation of consideration paid in connection with such Acquisition shall include all earn-out obligations, if any, in connection therewith, calculated at the maximum potential amount thereof; and

(d) for the purposes of calculating the Consolidated Fixed Charge Coverage Ratio for any Measurement Period on a Pro Forma Basis for determining compliance with the Payment Conditions with respect to any Specified Debt Payment under Section 8.11(a)(v), the amount of any proposed Specified Debt Payment, together with all other such payments made during such Measurement Period based on compliance with the Payment Conditions, shall be included in the definition of “Consolidated Fixed Charges” for such determination.

Whenever any provision of this Agreement requires the Loan Parties to be in compliance on a Pro Forma Basis (or in Pro Forma Compliance) with a specified level of Availability or specified Consolidated Fixed Charge Coverage Ratio in connection with any action to be taken by any Loan Party or any Subsidiary, the Borrower Agent shall deliver to the Administrative Agent a certificate of a Senior Officer setting forth in reasonable detail the calculations demonstrating such compliance.

“Properly Contested” means with respect to any obligation of a Loan Party, (a) the obligation is subject to a bona fide dispute regarding amount or such Loan Party’s liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to have a Material Adverse Effect, nor result in forfeiture or sale of any assets of a Loan Party; (e) no Lien is imposed on assets of a Loan Party, unless bonded and stayed to the reasonable satisfaction of the Administrative Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

“Protective Advance” has the meaning specified in Section 2.01(c)(ii)(A).

“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” has the meaning specified in Section 7.02.

“QFC” has the meaning specified in Section 11.21(b).

“QFC Credit Support” has the meaning specified in Section 11.21.

“Qualified ECP” means any Loan Party with total assets exceeding \$10,000,000, or that constitutes an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Ratable Share” has the meaning specified in Section 2.01(c)(ii)(C).

“Real Property” means all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Person, including all easements, rights-of-way, and similar rights appurtenant thereto and all leases, tenancies, and occupancies thereof.

“Recipient” means the Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any Obligation of a Borrower hereunder.

“Refinancing Conditions” means the following conditions for Refinancing Indebtedness: (a) it is in an aggregate principal amount that does not exceed the principal amount of the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended (the “Original Indebtedness”) plus accrued interest and reasonable fees and expenses incurred in connection with such Refinancing Indebtedness; (b) the interest rate applicable to such Refinancing Indebtedness does not exceed the greater of the (i) interest rate applicable to the Original Indebtedness and (ii) the otherwise market rate of interest for such similar Indebtedness to similar borrowers; (c) it has a final maturity no sooner than, and a weighted average life no less than, the applicable Original Indebtedness; (d) it contains no mandatory prepayment provisions more favorable to the lenders thereunder than the mandatory prepayment provision under the Original Indebtedness, (e) to the extent the Original Indebtedness is unsecured, such Refinancing Indebtedness shall be unsecured; (f) to the extent the Original Indebtedness is secured by Liens, such Refinancing Indebtedness is either unsecured or is not secured by any Liens that did not secure the Original Indebtedness immediately prior to incurrence of the Refinancing Indebtedness; (g) to the extent that such Original Indebtedness is subject to any Subordinations Provisions, such Refinancing Indebtedness is subject to Subordination Provisions no less favorable to the Administrative Agent and the Lenders than those applicable to the Original Indebtedness immediately prior to incurrence of the Refinancing Indebtedness; (h) no additional Person not obligated, primarily or contingently, on the Original Indebtedness is obligated, primarily or contingently, on such Refinancing Indebtedness; (i) such Refinancing Indebtedness shall be on terms not materially less favorable to the Administrative Agent or the Lenders, and not materially more restrictive to the Loan Parties, than the terms of the Original Indebtedness; and (j) upon giving effect to such Refinancing Indebtedness, no Default or Event of Default exists.

“Refinancing Indebtedness” means the Indebtedness that is the result of any modification, refinancing, refunding, replacement, renewal or extension of Indebtedness permitted under Section 8.01(b), (f), (g), (h), (p), (q) and (r) as to which the Refinancing Conditions are satisfied; provided that the incurrence of any such Refinancing Indebtedness will be deemed to utilize permitted amounts of Indebtedness, if any, under each clause thereof.

“Register” has the meaning specified in Section 11.06(c).

“Registered Public Accounting Firm” has the meaning specified in the Securities Laws and shall be independent of the Company as prescribed in the Securities Laws.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, 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 and/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 and/or the Federal Reserve Bank of New York, or any successor thereto.

“Rent and Charges Reserve” means the aggregate of (a) all past due rent and other amounts owing by a Borrower to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Eligible Borrowing Base Assets or could assert a Lien on any Eligible Borrowing Base Assets; and (b) a reserve at least equal to three months’ rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

“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.

“Reporting Trigger Period” means the period (a) commencing on the day that (i) an Event of Default occurs and is continuing or (ii) (1) on or prior to the date on which the Term Loan Obligations (other than contingent obligations which have not been asserted) are paid in full in cash, Availability is less than the greater of (x) 20.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$15,000,000, and (2) thereafter, Availability is less than the greater of (x) 15.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$8,500,000 and (b) continuing until the date that during the previous sixty (60) consecutive days, (i) no Event of Default has existed and (ii) (1) on or prior to the date on which the Term Loan Obligations (other than contingent obligations which have not been asserted) are paid in full in cash, Availability has been greater than the greater of (x) 20.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$15,000,000 at all times during such period and (2) thereafter, Availability has been greater than the greater of (x) 15.0% of the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$8,500,000 at all times during such period.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Loans, a Committed Loan Notice, (b) with respect to an Letter of Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, Lenders holding (and at any time there are two or more non-Affiliate Lenders, at least two non-Affiliate Lenders holding) more than 50% of the Total Credit Exposure of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Required Supermajority Lenders” means, as of any date of determination, Lenders holding (and at any time there are two or more non-Affiliate Lenders, at least two non-Affiliate Lenders holding) at least 66⅔% of the Total Credit Exposure of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Supermajority Lenders at any time.

“Rescindable Amount” has the meaning specified in Section 2.12(b)(ii).

“Reserve” means any reserve constituting all or any portion of the Availability Reserve.

“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 each Loan Party, the chief executive officer, president, chief financial officer, treasurer, controller or assistant treasurer of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Holdings or any Subsidiary, (ii) any payment (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 such Equity Interest, or on account of any return of capital to Holdings or any Subsidiary’s stockholders, partners or members (or the equivalent Person thereof) or (iii) any distribution, advance or repayment of Indebtedness to or for the account of a holder of Equity Interests of Holdings or its Affiliates.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of SOFR Loans, having the same Interest Period, made pursuant to Section 2.01(a) or (c).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrowers pursuant to Section 2.01(a), (b) purchase participations in Letter of Credit Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Lender’s participation in Letter of Credit Obligations, Swing Line Loans and Protective Advances at such time.

“Revolving Credit Facility” means the facility described in Sections 2.01(a), 2.03 and 2.04 providing for Revolving Credit Loans, Letters of Credit and Swing Line Loans to or for the benefit of the Borrowers by the Revolving Credit Lenders, Letter of Credit Issuer and Swing Line Lender, as the case may be, in the maximum aggregate principal amount at any time outstanding of \$50,000,000, as adjusted from time to time pursuant to the terms of this Agreement.

“Revolving Credit Lender” means each Lender that has a Revolving Credit Commitment or, following termination of the Revolving Credit Commitments, has any Revolving Credit Exposure.

“Revolving Credit Loan” has the meaning specified in Section 2.01(a).

“Revolving Credit Termination Date” means the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Credit Commitments pursuant to Section 2.07(a), and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the Letter of Credit Issuer to make Letter of Credit Extensions pursuant to Section 9.02.

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

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. and any successor thereto.

“Same Day Funds” means immediately available funds.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including the OFAC SDN List), the United States Department of State, the United Nations Security Council, the European Union, any European Union member state, Canada, His Majesty’s Treasury of the United Kingdom, or any other relevant sanctions authority, (b) any Person located, organized or resident in a Designated Jurisdiction or (c) any Person 50% or more owned by any Person described in clauses (a) or (b) above.

“Sanctions” means all economic or financial sanctions, sectoral sanctions, secondary sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States or Canadian government (including those administered by OFAC or the United States Department of State), or (b) the United Nations Security Council, the European Union, any European Union member state, His Majesty’s Treasury of the United Kingdom, or any other relevant sanctions authority with jurisdiction over any Loan Party or any of their respective Subsidiaries or Affiliates.

“Sarbanes-Oxley” means the Sarbanes-Oxley Act of 2002.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Party” means (a) each Lender, (b) each Credit Product Provider, (c) the Administrative Agent, (d) the Letter of Credit Issuer, (e) the Arranger and (f) the successors and assigns of each of the foregoing.

“Secured Party Expenses” has the meaning set forth in Section 11.04(a).

“Securities Laws” means the Securities Act of 1933, the Exchange Act, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

“Security Agreement” means the Security Agreement dated as of the date hereof by the Loan Parties and the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit C.

“Security Instruments” means, collectively or individually as the context may indicate, the Security Agreement, the Control Agreements, the Credit Card Notifications, the Mortgages, the Mortgage Related Documents, the Patent Security Agreement, the Trademark Security Agreement, each Lien Waiver and all other agreements (including securities account control agreements), instruments and other documents, whether now existing or hereafter in effect, pursuant to which any Loan Party or other Person shall grant or convey to the Administrative Agent or the Lenders a Lien in property as security for all or any portion of the Obligations.

“Settlement Date” has the meaning provided in Section 2.14(a).

“Shrink” means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

“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 Loan” means a Loan bearing interest based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Base Rate.”

“SOFR Revolving Credit Loan” means a Revolving Credit Loan that is a SOFR Loan.

“Solvent” means, as to any Person, such Person (a) owns property or assets whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns property or assets whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured 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. “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. For purposes hereof, the amount of all contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

“Specified Debt Payment” means any prepayment of Indebtedness proposed to be made pursuant to Section 8.11(a)(v).

“Specified Investment” means any Investment proposed to be made pursuant to Section 8.03(g) or (i).

“Specified Loan Party” means a Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 2.15(c)).

“Specified Pro Forma Transaction” means, with respect to any period, any Investment, Disposition, or other event, including any Specified Transactions, that by the terms of the Loan Documents requires “Pro Forma Compliance” with a test or covenant hereunder or requires such test or covenant to be calculated on a “Pro Forma Basis.”

“Specified Restricted Payment” means any Restricted Payment proposed to be made pursuant to Section 8.06(g).

“Specified Transaction” means each Specified Debt Payment, Specified Investment and Specified Restricted Payment.

“Subordinated Debt” means Indebtedness (including earnout payments) which is expressly subordinated in right of payment to the prior Payment in Full and which is in form and on terms reasonably satisfactory to, and approved in writing by, the Administrative Agent.

“Subordination Provisions” means any provision relating to debt or lien subordination applicable to or contained in any documents evidencing any Indebtedness, including Subordinated Debt or the Term Loans, including as set forth in the Intercreditor Agreement or other applicable intercreditor agreements acceptable to the Administrative Agent.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (but not a representative office of such Person) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Holdings.

“Subsidiary Guarantor” means any Subsidiary of the Company that is a Guarantor.

“Supplemental Facility” has the meaning provided in Section 11.01(c).

“Swap Contract” 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, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, together with any related schedules.

“Swap Obligation” means, with respect to any Loan Party, any obligation to 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 Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts 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), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender); provided, however that it is understood and agreed that such amounts provided by the applicable Credit Product Provider with respect to Credit Product Obligations under Swap Contracts may include a commercially reasonable level of “cushion” to account for normal short-term market fluctuations.

“Swing Line” means the revolving credit facility made available by the Swing Line Lender pursuant to Section 2.04.

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means BMO in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), substantially in the form of Exhibit I.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Aggregate Revolving Credit Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Credit Commitments.

“Syndication Agent” means BMO Capital Markets in its capacity as syndication agent under any of the Loan Documents, or any successor syndication agent.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Tax Receivable Agreement” means that certain Tax Receivable Agreement dated February 2, 2018, by and between Holdings and InnoHold, LLC, as amended, modified or supplemented from time to time prior to the date hereof and as further amended, modified or supplemented from time to time not in violation of this Agreement.

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

“Term Facility Borrowing Base” means the “Borrowing Base” as defined in the Term Loan Credit Agreement.

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

“Term Loan Agent” means the “Administrative Agent” as defined in the Term Loan Credit Agreement.

“Term Loan Credit Agreement” means that certain Term Loan Credit Agreement dated as of the Closing Date by, among others, Holdings, the Borrower, the Term Loan Agent, and the lenders from time to time parties thereto, as such agreement may be amended, supplemented, waived or otherwise modified from time to time to the extent permitted hereunder and any Refinancing Indebtedness in respect thereof in each case to the extent permitted hereunder.

“Term Loan Documents” means, collectively, (i) the Term Loan Credit Agreement and (ii) the security documents, intercreditor agreements (including the Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the Term Loan Facility or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time including in connection with Refinancing Indebtedness of the Term Loan Facility.

“Term Loan Facility” means the collective reference to the Term Loan Credit Agreement, the Term Loan Documents, any notes and letters of credit issued pursuant thereto and any guarantee, security agreement, patent, trademark or copyright security agreements, mortgages, letter of credit applications and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time to the extent permitted hereunder and any Refinancing Indebtedness in respect thereof, in each case to the extent permitted hereunder.

“Term Loan Lender” has the meaning set forth in the Term Loan Credit Agreement.

“Term Loan Liens” means Liens permitted under Section 8.02(o) in favor of the Term Loan Agent pursuant to the Term Loan Documents to secure the Term Loan Obligations.

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

“Term Priority Collateral” has the meaning set forth in the Intercreditor Agreement.

“Term Loan Push Down Reserve” means a Reserve in an amount equal to the greater of (x) \$0 and (y) the excess, if any, of the aggregate principal amount of the Term Loans then outstanding over the Term Facility Borrowing Base set forth in the most recently delivered Borrowing Base Certificate (or, if applicable, the amount set forth in the most recently delivered Term Loan Push Down Correction Notice (as defined in the Intercreditor Agreement) delivered pursuant to the Intercreditor Agreement). Upon the earlier of (x) receipt by the Administrative Agent of a Borrowing Base Certificate that confirms the existence of a Term Loan Push Down Reserve, and (y) within three (3) Business Days following written notice from the Term Loan Agent of the existence of any such Term Loan Push Down Reserve, a Term Loan Push Down Reserve shall be implemented.

“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 (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 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 U.S. Government Securities 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 U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Base Rate Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base 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 U.S. Government Securities 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 U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day.

“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 reasonable discretion).

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

“Threshold Amount” means Two Million Dollars (\$2,000,000).

“Total Credit Exposure” means, as to any Lender at any time, the unused outstanding Commitments of such Lender and the Credit Exposure of such Lender at such time.

“Total Revolving Credit Outstandings” means, without duplication, the aggregate Outstanding Amount of all Revolving Credit Loans, Protective Advances, Swing Line Loans and Letter of Credit Obligations.

“Trademark Security Agreement” means any trademark security agreement pursuant to which any Loan Party assigns to the Administrative Agent, for the benefit of the Secured Parties, such Person’s interest in its trademarks as security for the Obligations.

“Transaction” means, individually or collectively as the context may indicate, (a) entering into the Term Loan Documents and the funding of the Term Loan Facility and (b) the entering by the Loan Parties into the Loan Documents to which they are a party and the funding of the Revolving Credit Facility.

“Treasury Management and Other Services” means (a) all arrangements for the delivery of treasury and cash management services, (b) all commercial credit card, purchase card, p-card and merchant card services; and (c) all other banking products or services, including trade and supply chain finance services, other than Letters of Credit, in each case, to or for the benefit of any Loan Party or an Affiliate of any Loan Party which are entered into or maintained with a Lender or an Affiliate of a Lender and which are not prohibited by the express terms of the Loan Documents.

“Trust Accounts” means Deposit Accounts or Securities Accounts containing cash, cash equivalents or Securities (a) held exclusively for employee benefit payments and expenses related to a Loan Party’s employees, or (b) required to be collected, remitted or withheld exclusively to pay payroll or taxes (including, without limitation, federal and state withholding taxes (including the employer’s share thereof)).

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a SOFR Loan.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if, with respect to any financing statement or by reason of any mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Administrative Agent pursuant to any applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than the State of New York, the term “UCC” shall also include the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of this Agreement, each Loan Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

“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, which 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.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unused Facility Amount” means the daily amount by which (a) the Aggregate Revolving Credit Commitments exceeds (b) the sum of (i) Outstanding Amount of all Revolving Credit Loans other than Swing Line Loans and (ii) the Outstanding Amount of all Letter of Credit Obligations, subject to adjustment as provided in Section 2.17. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be considered usage for purposes of determining the Unused Facility Amount.

“Unused Fee” has the meaning specified in Section 2.09(a).

“Unused Fee Rate” means a per annum rate equal to (a) 0.50%, if the average daily Unused Facility Amount was less than 33% of the Aggregate Revolving Credit Commitments during the preceding fiscal quarter, or (b) 0.375%, if average daily Unused Facility Amount was 33% or greater of the aggregate Revolving Credit Commitments during such fiscal quarter.

“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. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“Value” means, for an Eligible Account, the face amount of such Eligible Account, net of (a) any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could reasonably be expected to be claimed by the Account Debtor or any other Person and (b) the amount of any premiums, deductibles, co-insurance, fees or similar costs of and amounts payable by any Borrower relating to any acceptable credit insurance obtained with respect to such Account.

“Voting Equity Interests” means Equity Interests with respect to which the holders thereof are ordinarily, in the absence of contingencies, entitled to vote for the election of members of the Board of Directors of the issuer thereof, even if the right so to vote has been suspended by the happening of such a contingency.

“Wage Claim Reserves” means the reserves established by the Administrative Agent from time to time, in its reasonable discretion, to reflect the aggregate amount of liabilities of the Loan Parties that are or, upon nonpayment of or creation of a claim with respect to such liability, would, pursuant to Law, be secured by Liens on the Collateral that are senior to the Administrative Agent’s Liens arising from any state or Federal statutory provision for wage claims, unpaid taxes or other obligations or liabilities of the Loan Parties.

“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.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) 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 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, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) 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 and (vii) all covenants in Article VIII 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 be otherwise within the limitations of, another covenant (other than specific cross references permitting actions or conditions under other covenants) shall not avoid the occurrence of an Event of Default or Default if such action is taken or condition exists.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) A reference to Loan Parties’ “knowledge” or similar concept means actual knowledge of a Responsible Officer, or knowledge that a 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.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect on the Closing Date, except (i) with respect to any reports or financial information required to be delivered pursuant to Section 7.01, which shall be prepared in accordance with GAAP as in effect and applicable to that accounting period in respect of which reference to GAAP is being made and (ii) as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of each Loan Party 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.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower Agent or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower Agent shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower Agent shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything to the contrary contained in this Section 1.03 or the definition of “Capital Lease Obligations”, in the event of a change in GAAP requiring all leases to be capitalized, only those leases that would have constituted Capital Leases on the Closing Date (assuming for purposes hereof that such leases were in existence on the Closing Date) shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such change in GAAP shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such change).

(c) Consolidation of Variable Interest Entities. Except as expressly provided otherwise herein, all references herein to Consolidated financial statements of the Company and its Subsidiaries or to the determination of any amount for the Company and its Subsidiaries on a Consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Company is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

(d) Calculations. In computing financial ratios and other financial calculations of the Company and its Subsidiaries required to be submitted pursuant to this Agreement, all Indebtedness of the Company and its Subsidiaries shall be calculated at par value irrespective if the Company has elected the fair value option pursuant to FASB Interpretation No. 159 – The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115 (February 2007).

1.04 Uniform Commercial Code. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: “Chattel Paper,” “Commodity Account,” “Commodity Contracts,” “Deposit Account,” “Documents,” “Equipment,” “General Intangibles,” “Instrument,” “Inventory,” “Record,” and “Securities Account.”

1.05 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Central time (daylight or standard, as applicable).

1.07 Letter of Credit Amounts. 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; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer 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.

1.08 Interest 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 the Benchmark, 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, the Benchmark 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 the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) and/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 reasonable discretion to ascertain the Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity 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.

1.09 Automatic Increases to Fixed Dollar Availability Floors. Notwithstanding anything to the contrary in this Agreement or otherwise, in the event that any fixed dollar floor in respect of any Availability-based test or trigger in the Term Loan Credit Agreement is increased (including pursuant to an increase in the Term Loan Facility pursuant to Section 2.14 of the Term Loan Credit Agreement), each fixed dollar floor in respect of each corresponding Availability-based test or trigger in each of this Agreement and the other Loan Documents (including, without limitation, those set forth in the definitions of “Dominion Trigger Period”, “Field Exam Trigger Event”, “Reporting Trigger Period”, “Payment Conditions” and Section 8.12) shall automatically increase by the equivalent amount without the need for any further action.

ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Loan Commitments.

(a) Revolving Credit Commitments. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “Revolving Credit Loan”) to the Borrowers from time to time during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (i) the amount of such Lender’s Revolving Credit Commitment, or (ii) such Lender’s Applicable Revolving Credit Percentage of the Borrowing Base; provided however, that after giving effect to any Revolving Credit Borrowing, (A) the Total Revolving Credit Outstandings shall not exceed Maximum Borrowing Amount, and (B) the Revolving Credit Exposure of each Lender shall not exceed such Lender’s Revolving Credit Commitment.

Within such limits and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01(a), prepay under Section 2.06(a), and reborrow under this Section 2.01(a).

(b) [Reserved].

(c) Overadvances and Protective Advances.

(i) Overadvances.

(A) If at any time the aggregate principal balance of all Total Revolving Credit Outstandings exceeds the Borrowing Base (an “Overadvance”), the excess amount shall be payable by the Borrowers on demand by the Administrative Agent. All Overadvance Loans shall constitute Obligations secured by the Collateral and shall be entitled to all benefits of the Loan Documents.

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(B) The Administrative Agent may, in its sole discretion (but shall have absolutely no obligation to), require Lenders to honor requests for Overadvance Loans and to forbear from requiring the applicable Borrower(s) to cure an Overadvance as long as (a) such Overadvance does not continue for more than 30 consecutive days and (b) the aggregate amount of the Overadvances existing at any time, together with the Protective Advances outstanding at any time, do not exceed 10.0% of the Aggregate Revolving Commitments then in effect. Overadvance Loans may be required even if the conditions set forth in Section 5.02 have not been satisfied. In no event shall Overadvance Loans be required that would cause the Total Revolving Credit Outstandings to exceed the Aggregate Revolving Credit Commitments. Required Lenders may at any time revoke the Administrative Agent’s authority to make further Overadvance Loans to any or all Borrowers by written notice to the Administrative Agent. Any funding of an Overadvance Loan or sufferance of an Overadvance shall not constitute a waiver by the Administrative Agent or Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Loan Party be deemed a beneficiary of this Section 2.01(c) nor authorized to enforce any of its terms.

(ii) Protective Advances.

(A) The Administrative Agent shall be authorized by each Borrower and the Lenders from time to time in the Administrative Agent’s sole discretion (but shall have absolutely no obligation to), to make Base Rate Loans to the Borrowers on behalf of the Lenders (any of such Loans are herein referred to as “Protective Advances”) which the Administrative Agent deems necessary or desirable to (a) preserve or protect Collateral or any portion thereof or (b) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Credit Exposure; provided that no Protective Advance shall cause the aggregate amount of the Total Revolving Credit Outstandings at such time to exceed the Aggregate Revolving Credit Commitments then in effect. All Protective Advances made by the Administrative Agent constitute Obligations, secured by the Collateral and shall be treated for all purposes as Base Rate Loans.

(B) The aggregate amount of Protective Advances outstanding at any time shall not exceed 10.0% of the Aggregate Revolving Credit Commitments then in effect, and such Protective Advances, together with the aggregate amount of Overadvances existing at any time, shall not exceed 10.0% of the Aggregate Revolving Credit Commitments then in effect. Protective Advances may be made even if the conditions set forth in Section 5.02 have not been satisfied. Each Lender shall participate in each Protective Advance on a ratable basis. Required Lenders may at any time revoke the Administrative Agent’s authority to make further Protective Advances to any or all Borrowers by written notice to the Administrative Agent. Absent such revocation, the Administrative Agent’s determination that funding of a Protective Advance is appropriate shall be conclusive. At any time that there is sufficient Availability and the conditions precedent set forth in Section 5.02 have been satisfied, the Administrative Agent may request the Lenders to make a Loan to repay a Protective Advance. At any other time, the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.01(c)(ii)(C).

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(C) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default or Event of Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance equal to the proportion of the Total Credit Exposure of such Lender to the Total Credit Exposure of all Lenders (its “Ratable Share”) of such Protective Advance. Each Lender shall transfer (a “Transfer”) the amount of such Lender’s purchased interest and participation promptly when requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, but in any case not later than 3:00 p.m. on the Business Day notified (if notice is provided by the Administrative Agent prior to 12:00 p.m. and otherwise on the immediately following Business Day (the “Transfer Date”). Transfers may occur during the existence of a Default or Event of Default and whether or not the applicable conditions precedent set forth in Section 5.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amount of the applicable Protective Advance and shall constitute Loans of such Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Lender on such Transfer Date, the Administrative Agent shall be entitled to recover such amount 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 Administrative Agent, at the Overnight Rate for three (3) Business Days and thereafter at the Base Rate. From and after the date, if any, on which any Lender is required to fund, and funds, its interest and participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender’s Ratable Share of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

(d) Determination of the Borrowing Base. The Borrowing Base shall be established and adjusted from time to time as follows:

(i) The amount of the Borrowing Base shall initially be established in each Borrowing Base Certificate delivered to the Administrative Agent by the Borrower Agent pursuant to Section 7.02(a). The Administrative Agent shall have the right, at any time and from time to time on and after the Closing Date in good faith and in the exercise of its Credit Judgment to establish, modify or eliminate Reserves. The Borrowing Base shall also be subject to adjustment by the Administrative Agent in its Credit Judgment (A) to reflect any determination that the amount of the Borrowing Base set forth in a Borrowing Base Certificate differs materially from the actual Borrowing Base determined by the Administrative Agent in its Credit Judgment; (B) to reflect Administrative Agent’s reasonable estimate of declines in value of Borrowing Base Assets due to collections received in the Concentration Account or otherwise; (C) to reflect changes in advance rates as a result of changes in dilution, quality, mix and other factors affecting the Borrowing Base Assets, (D) to the extent any information or calculation does not comply with this Agreement and (E) to reflect other adjustments in accordance with the terms of this Agreement.

(ii) In connection with any adjustment to the Borrowing Base, the Administrative Agent shall (A) promptly notify the Borrower Agent in writing (including via e-mail) whenever the Administrative Agent determines that the amount of the Borrowing Base set forth in a Borrowing Base Certificate differs materially from the actual Borrowing Base determined by the Administrative Agent in its Credit Judgment and (B) discuss with Borrower Agent (1) the basis for any such difference and (2) any changes made or proposed to be made to the amount of the Borrowing Base, including the reasons for any imposition of or changes in Reserves or any change in advance rates or eligibility criteria with respect to Borrowing Base Assets. The determination of the Borrowing Base by the Administrative Agent shall be presumptively correct and shall constitute the Borrowing Base for all purposes hereunder.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of SOFR Loans shall be made upon the Borrower’s irrevocable notice (subject to Section 3.03) to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of SOFR Loans or of any conversion of SOFR Loans to Base Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrowers pursuant to this Section 2.02(a) must be promptly confirmed in writing by a Responsible Officer of the Borrower Agent. Each Borrowing of, conversion to or continuation of SOFR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Except as provided in Sections 2.02(f), 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. During a Dominion Trigger Period, there shall be no

minimum borrowing amounts for Base Rate Loans. Each such notice (whether telephonic or written) shall specify (i) the principal amount of Loans to be borrowed, converted or continued, (ii) the Type of Loans to be borrowed or to which existing Loans are to be converted, (iii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day) and (iv) if applicable, the duration of the Interest Period with respect thereto. If the Borrowers fail to specify a Type of Loan or if the Borrowers fail to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable SOFR Loans. If the Borrowers request a Borrowing of, conversion to, or continuation of SOFR Loans in any such Committed Loan Notice, but fail to specify an Interest Period, they will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under such Facility of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrowers, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. Each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 5.02 (and, if such Borrowing is the initial Credit Extension, Section 5.01), the Administrative Agent shall make all funds so received available to the Borrowers in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrowers on the books of BMO with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are Letter of Credit Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such Letter of Credit Borrowings, and second, shall be made available to the Borrowers as provided above.

(c) Except as otherwise provided herein, a SOFR Loan may be continued or converted only on the last day of an Interest Period for such SOFR Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as SOFR Loans without the consent of the Administrative Agent.

(d) The Administrative Agent shall promptly notify the Borrower Agent and the Lenders of the interest rate applicable to any Interest Period for SOFR Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower Agent and the Lenders of any change in BMO's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Revolving Credit Facility.

(f) Borrowers and each Lender hereby irrevocably authorize the Administrative Agent, in the Administrative Agent's sole discretion, to advance to Borrowers, and/or to pay and charge to Borrowers' Loan Account hereunder, all sums necessary to pay (i) any interest accrued on the Obligations when due and to pay all fees, costs and expenses and other Obligations at any time owed by any Loan Party to the Administrative Agent or any Lender hereunder and (ii) any service charge or expenses due pursuant to Section 11.04 when due. The Administrative Agent shall advise the Borrower Agent of any such advance or charge promptly after the making thereof. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's rights and the Borrowers' obligations under this Agreement. Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(f) shall constitute Revolving Credit Loans (notwithstanding the failure of the Borrowers to satisfy any of the conditions to Credit Extensions in Section 5.02) and Obligations hereunder and shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the Letter of Credit Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period

from the Closing Date until the earlier to occur of the Letter of Credit Expiration Date or the termination of the Availability Period, to issue Letters of Credit at the request of the Borrower Agent for the account of a Borrower (or any other Loan Party or Domestic Subsidiary thereof as to which all “know your customer” or other similar requirements have been satisfied) so long as such Borrower is a joint and several co-applicant; references to a “Borrower” in this Section 2.03 shall be deemed to include reference to such other Loan Party and any applicable Domestic Subsidiary, as the case may be, and to amend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drafts under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the a Borrower and any drawings thereunder; provided that the Letter of Credit Issuer shall not be obligated to make any Letter of Credit Extension with respect to any Letter of Credit, and no Revolving Credit Lender shall be obligated to participate in any Letter of Credit, if as of the date of such Letter of Credit Extension, (A) the Total Revolving Credit Outstandings would exceed the Maximum Borrowing Amount, (B) the Revolving Credit Exposure of any Revolving Credit Lender would exceed such Revolving Credit Lender’s Revolving Credit Commitment, or (C) the Outstanding Amount of all Letter of Credit Obligations would exceed the Letter of Credit Sublimit. Each request by the Borrower Agent for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower Agent that the Letter of Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers’ ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The Letter of Credit Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur (i) as to standby Letters of Credit, more than twelve months after the date of issuance or last renewal, and (ii) as to commercial Letters of Credit, later than the earlier of (1) 270 days after the date of issuance thereof and (2) 60 days before the Letter of Credit Expiration Date, unless in each case the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless Cash Collateralized on and after the Letter of Credit Expiration Date or all the Lenders have approved such expiry date;

(iii) The Letter of Credit Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Letter of Credit Issuer from issuing such Letter of Credit or any Law applicable to the Letter of Credit Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Letter of Credit Issuer shall prohibit, or request that the Letter of Credit Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Letter of Credit Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Letter of Credit Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Letter of Credit Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Letter of Credit Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the Letter of Credit Issuer;

(C) such Letter of Credit is in an initial amount less than \$10,000;

(D) any Lender is at that time a Defaulting Lender, unless the Letter of Credit Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the Letter of Credit Issuer (in its sole discretion) with the Borrowers or such Lender to eliminate the Letter of Credit Issuer’s actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other Letter of Credit Obligations as to which the Letter of Credit Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) The Letter of Credit Issuer shall not amend any Letter of Credit if the Letter of Credit Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The Letter of Credit Issuer shall be under no obligation to amend any Letter of Credit if (A) the Letter of Credit Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The Letter of Credit Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the Letter of Credit Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article X with respect to any acts taken or omissions suffered by the Letter of Credit Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “Administrative Agent” as used in Article X included the Letter of Credit Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Letter of Credit Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower Agent delivered to the Letter of Credit Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower Agent and, if applicable, of the applicable Borrower. Such Letter of Credit Application must be received by the Letter of Credit Issuer and the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the Letter of Credit Issuer may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Letter of Credit Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing or presentation thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing or presentation thereunder; and (G) such other matters as the Letter of Credit Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Letter of Credit Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the Letter of Credit Issuer may require. Additionally, the Borrower Agent shall furnish to the Letter of Credit Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the Letter of Credit Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the Letter of Credit Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, the Letter of Credit Issuer will provide the Administrative Agent with a copy thereof. Unless the Letter of Credit Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Borrower, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article V shall not then be satisfied, then, subject to the terms and conditions hereof, the Letter of Credit Issuer shall, on the requested date, issue a Letter of Credit for the account of the Company or the Company and the applicable Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the Letter of Credit Issuer’s usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Letter of Credit Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender’s Applicable Percentage times the amount of such Letter of Credit.

(iii) If the Borrower Agent so requests in any applicable Letter of Credit Application, the Letter of Credit Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit other than a commercial Letter of Credit that has automatic extension provisions (each, an “Auto-Extension Letter of Credit”); provided that any such Auto-Extension Letter of Credit must permit the Letter

of Credit Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Letter of Credit Issuer, the Borrower Agent shall not be required to make a specific request to the Letter of Credit Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the Letter of Credit Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the Letter of Credit Issuer shall not permit any such extension if (A) the Letter of Credit Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Borrower Agent that one or more of the applicable conditions specified in Section 5.02 is not then satisfied, and in each such case directing the Letter of Credit Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Letter of Credit Issuer will also deliver to the Borrower Agent and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing or presentation of documents under such Letter of Credit, the Letter of Credit Issuer shall notify the Borrower Agent and the Administrative Agent thereof. Not later than 1:00 p.m. on the date of any payment by the Letter of Credit Issuer under a Letter of Credit (each such date, an “Honor Date”), the Borrowers shall reimburse the Letter of Credit Issuer through the Administrative Agent in Dollars and in an amount equal to the amount of such drawing. If the Borrowers fail to reimburse the Letter of Credit Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing or payment (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender’s Applicable Percentage thereof. In such event, the Borrower Agent shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.03 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 5.02 (other than the delivery of a Committed Loan Notice). Any notice given by the Letter of Credit Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) to the Administrative Agent for the account of the Letter of Credit Issuer, in Dollars, at the Administrative Agent’s Office for Dollar denominated payments an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 3:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Revolving Credit Loan to the Borrower Agent in such amount. The Administrative Agent shall remit the funds so received to the Letter of Credit Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 5.02 cannot be satisfied or for any other reason, the Borrowers shall be deemed to have incurred from the Letter of Credit Issuer a Letter of Credit Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which Letter of Credit Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender’s payment to the Administrative Agent for the account of the Letter of Credit Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such Letter of Credit Borrowing and shall constitute an Letter of Credit Advance from such Revolving Credit Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or Letter of Credit Advance pursuant to this Section 2.03(c) to reimburse the Letter of Credit Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Credit Lender's Applicable Percentage of such amount shall be solely for the account of the Letter of Credit Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or Letter of Credit Advances to reimburse the Letter of Credit Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the Letter of Credit Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing. No such making of an Letter of Credit Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the Letter of Credit Issuer for the amount of any payment made by the Letter of Credit Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Letter of Credit Issuer any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the Letter of Credit Issuer shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Letter of Credit Issuer at a rate per annum equal to the applicable Overnight Rate for three (3) Business Days and thereafter at the Base Rate, plus any administrative, processing or similar fees customarily charged by the Letter of Credit Issuer in connection with the foregoing. A certificate of the Letter of Credit Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations. At any time after the Letter of Credit Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Revolving Credit Lender's Letter of Credit Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the Letter of Credit Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in Dollars (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's Letter of Credit Advance was outstanding) and in the same funds as those received by the Administrative Agent.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse the Letter of Credit Issuer for each drawing under each Letter of Credit, and to repay each Letter of Credit Borrowing shall be joint and several and absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Letter of Credit Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document or endorsement presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the Letter of Credit Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit, or any payment made by the Letter of Credit Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator,

receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower or any Subsidiary.

(f) Role of Letter of Credit Issuer. Each Revolving Credit Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the Letter of Credit Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Letter of Credit Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Letter of Credit Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit. The Letter of Credit Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Letter of Credit Issuer shall not be responsible for the validity or sufficiency of any instrument endorsing, transferring or assigning or purporting to endorse, transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP and UCP. Unless otherwise expressly agreed by the Letter of Credit Issuer and the Borrower Agent, when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby 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.

(h) Fronting Fee and Documentary and Processing Charges Payable to Letter of Credit Issuer. The Borrowers shall pay directly to the Letter of Credit Issuer for its own account a fronting fee with respect to each Letter of Credit, at a rate equal to 0.125%, computed on the amount of such Letter of Credit (a “Fronting Fee”), and payable upon the issuance or renewal (automatic or otherwise) thereof or upon any amendment increasing the amount thereof. In addition, the Borrowers shall pay directly to the Letter of Credit Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Letter of Credit Issuer relating to letters of credit issued by it as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(i) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(j) Letters of Credit Issued for Subsidiaries. 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, Holdings or any other Loan Party, each Borrower shall be obligated to reimburse the Letter of Credit Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries, Holdings or any other Loan Party inures to the benefit of such Borrower, and that such Borrower’s business derives substantial benefits from the businesses of such Subsidiaries, Holdings or other Loan Party.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender may, but shall not be obligated to, make loans in reliance upon the agreements of the other Lenders set forth in this Section 2.04 in Dollars (each such loan, a “Swing Line Loan”) to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Credit Loans and Letter of Credit Obligations of the Revolving Credit Lender acting as Swing Line Lender, may exceed the amount of such Revolving Credit Lender’s Revolving Credit Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the

Maximum Borrowing Amount, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Revolving Credit Lender's Revolving Credit Commitment, and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits and subject to the discretion of the Swing Line Lender to make Swing Line Loans, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.06(a)(ii), and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Revolving Credit Loan. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower Agent's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 12:00 noon on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$500,000 and integral multiples of \$100,000 in excess thereof, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower Agent. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will (i) deliver notice to the Borrower Agent and the Administrative Agent as to whether it will or will not make such Swing Line Loan available to the Borrowers and, if agreeing to make such Swing Line Loan, (ii) confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 1:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article V is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender may, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower Agent at its office by crediting the account of the Borrower Agent on the books of the Swing Line Lender in Same Day Funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion, but no less frequently than weekly, may request, on behalf of the Borrowers (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Revolving Credit Loan in an amount equal to such Revolving Credit Lender's Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02 without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 5.02. The Swing Line Lender shall furnish the Borrower Agent with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 2:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Revolving Credit Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Revolving Credit Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate for three (3) Business Days and thereafter at the Base Rate, plus any administrative processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. A certificate of the Swing Line Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 5.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(v) All refinancings and fundings under this Section 2.04(c) shall be in addition to and without duplication of the settlement procedures and obligations under Section 2.14.

(d) Repayment of Participations. At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Revolving Credit Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Repayment of Loans.

(a) [Reserved].

(b) Revolving Credit Loans. The Borrowers shall repay to the Administrative Agent for the account of each the Revolving Credit Lenders on the Maturity Date the aggregate principal amount of and all accrued and unpaid interest on all Revolving Credit Loans outstanding on such date.

(c) Swing Line Loans. The Borrowers shall repay each Swing Line Loan on the earlier to occur of (i) each refinancing date arising under Section 2.04(c) and (ii) the Maturity Date.

(d) Protective Advances and Overadvances. The Borrowers shall repay all Protective Advances and Overadvances on the earlier to occur of (i) demand by the Administrative Agent and (ii) the Maturity Date.

(e) Other Obligations. Obligations other than principal and interest on the Loans, including Letter of Credit Obligations and Extraordinary Expenses, shall be paid by Borrowers as specifically provided herein and in any other applicable Loan Documents or, if no payment date is specified, on demand.

2.06 Prepayments.

(a) Optional.

(i) The Borrowers may, upon notice to the Administrative Agent from the Borrower Agent, at any time or from time to time voluntarily prepay Revolving Credit Loans in whole or in part without premium or penalty; provided that except with respect to prepayments in accordance with Section 4.04(c), (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three (3) Business Days prior to any date of prepayment of SOFR Loans and (2) one (1) Business Day prior to any date of prepayment of Base Rate Loans; (B) any prepayment of SOFR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. During a Dominion Trigger Period, there shall be no minimum repayment amount for Base Rate Loans. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if SOFR Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower Agent, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a SOFR Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.17, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(ii) The Borrowers may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent) from the Borrower Agent, at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower Agent, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

(i) [Reserved.]

(ii) Asset Dispositions. Subject to the Intercreditor Agreement, if a Disposition occurs with respect to any property of any Loan Party or any of its Subsidiaries (other than any Disposition of property permitted by Section 8.05(a), (c), (e), (f), (g), (h) (to the extent such Disposition is a discount of or compromise of overdue accounts in the Ordinary Course of Business), (i) or (j) which results in the realization by such Person of Net Cash Proceeds in excess of \$1,000,000 in any calendar year, the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of such Net Cash Proceeds immediately upon receipt thereof by such Person.

(iii) Equity Issuance. Upon the sale or issuance by any Loan Party or any of its Subsidiaries of any of its Equity Interests (other than (x) the issuance of Equity Interests to another Loan Party or Subsidiary of a Loan Party to the extent permitted by this Agreement, and (y) the issuance by Holdings of Equity Interests to directors, officers or employees pursuant to employee stock option plans approved by Holdings' board of directors), the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by such Loan Party or such Subsidiary.

(iv) Debt Incurrence. Upon the incurrence or issuance by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 8.01 or otherwise consented to by the Required Lenders), the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if

applicable) equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by such Loan Party or such Subsidiary.

(v) Extraordinary Receipts. Subject to the Intercreditor Agreement, upon receipt of any cash by (or paid to or for the account of) any Loan Party or its Subsidiaries not in the ordinary course of business in excess of \$1,000,000 in any calendar year, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), indemnity payments, purchase price adjustments, judgments, settlements or other payments in connection with any cause of action, but as long as no Default or Event of Default is outstanding excluding Excluded Receipts, and not otherwise included in clauses (ii), (iii) or (iv) of this Section 2.06(b), the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of the cash amount thereof (net of all reasonable out-of-pocket expenses or other amounts required to be paid in connection therewith) immediately upon receipt.

(vi) Overadvances. If for any reason the Total Revolving Credit Outstandings at any time exceed the Borrowing Base at such time, the Borrowers shall upon demand prepay Revolving Credit Loans, Swing Line Loans and Letter of Credit Borrowings and/or Cash Collateralize the Letter of Credit Obligations in an aggregate amount equal to such excess.

(c) Application of Mandatory Prepayments. Subject to Section 9.03:

(i) Each prepayment of Loans pursuant to the provisions of Section 2.06(b) shall be applied to the Revolving Credit Facility in the manner set forth in clause (ii) below. Subject to Section 2.17, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentage in respect of the relevant Facilities.

(ii) Except as otherwise provided in Section 2.17, prepayments of the Revolving Credit Facility made pursuant to Section 2.06(b), first, shall be applied ratably to the Letter of Credit Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Credit Loans, third, shall be used to Cash Collateralize the remaining Letter of Credit Obligations in the Minimum Collateral Amount and, fourth, the amount remaining, if any, after the prepayment in full of all outstanding Obligations (other than Credit Product Obligations) and the Cash Collateralization of the remaining Letter of Credit Obligations in the Minimum Collateral Amount, may be retained by the Borrowers for use in the ordinary course of Borrowers' business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party or any Defaulting Lender that has provided Cash Collateral) to reimburse the Letter of Credit Issuer or the Revolving Credit Lenders, as applicable.

(d) Reinvestment. Notwithstanding the foregoing, with respect to any Net Cash Proceeds realized in connection with a Disposition described in Section 2.06(b)(ii), at the election of the Borrowers (as notified by the Borrower Agent to the Administrative Agent on or prior to the date of such Disposition or receipt of proceeds) and so long as no Default shall have occurred and be continuing, such Loan Party or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets within 180 days after the receipt of such Net Cash Proceeds (the consummation of such reinvestment to be certified by the Borrowers in writing to the Administrative Agent within such period); provided, however, that any Net Cash Proceeds not so reinvested shall be immediately applied to the prepayment of the Loans as set forth in Section 2.06(c) and such amounts shall be held as Cash Collateral and provisionally applied to reduce the outstanding principal balance of the Revolving Credit Loans (but shall not create Availability) until the earlier of reinvestment or the expiration of 180 days from receipt.

2.07 Termination or Reduction of Commitments. The Borrowers may, upon notice to the Administrative Agent from the Borrower Agent, terminate the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce (A) the Aggregate Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Aggregate Revolving Credit Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of Letter of Credit Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit and (iv) if, after giving effect to any reduction or termination of the Aggregate Revolving

Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Revolving Credit Commitments, such Sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit. Any reduction of the Aggregate Revolving Credit Commitments shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Applicable Revolving Credit Percentage. All fees accrued until the effective date of any termination of the Aggregate Revolving Credit Commitments shall be paid on the effective date of such termination.

2.08 Interest.

(a) Subject to the provisions of subsection (b) and Section 3.03 below, (i) each SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to Adjusted Term SOFR for such Interest Period plus the Applicable Margin; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; and (iv) each other Obligation (including, to the extent not prohibited by applicable Law, interest not paid when due) shall bear interest on the unpaid amount thereof at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) (i) If any amount payable by the Borrowers under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any other Event of Default exists, then the Administrative Agent may, and upon the request of the Required Lenders shall, require (and notify the Borrower Agent thereof) that all outstanding Loan Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto, the Maturity Date and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law

(d) If, for any reason (including inaccurate reporting in any Compliance Certificate, Borrowing Base Certificate or other Borrower Materials), it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and Borrowers shall immediately pay to the Administrative Agent, for the ratable benefit of Lenders, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid.

2.09 Fees.

(a) Unused Fee. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a fee (the “Unused Fee”) equal to the Unused Fee Rate times the Unused Facility Amount. The Unused Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the first (1st) Business Day after each calendar quarter, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. If there is any change in the Unused Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Unused Fee Rate separately for each period during such quarter that such Unused Fee Rate was in effect.

(b) Letter of Credit Fees. Subject to the provisions of the last sentence of this clause (b), the Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Percentage, in Dollars, a Letter of Credit fee (“Letter of Credit Fee”) for each Letter of Credit equal to the Applicable Margin for SOFR Loans times 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); provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Letter of Credit Issuer shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Credit Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.17(a)(iv), with the balance of such fee, if any, payable to the Letter of Credit Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. The Letter of Credit Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the first Business Day after each calendar quarter, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. If there is any change in the Applicable Margin for SOFR Loans during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Margin for SOFR Loans separately for each period during such quarter that such Applicable Margin was in effect. At all times that the Default Rate shall be applicable to any Loans pursuant to Section 2.08(b), the Letter of Credit Fees payable under this clause (b) shall accrue and be payable at the Default Rate.

(c) Fee Letter. The Borrowers agree to pay to the Administrative Agent, for its own account, the fees payable in the amounts and at the times set forth in the Fee Letter.

(d) Generally. All fees payable hereunder shall be paid on the dates due, in immediately available funds, to (i) the Administrative Agent for distribution, in the case of commitment fees and participation fees, to the Revolving Credit Lenders, and otherwise, to the Lenders entitled thereto or (ii) the Letter of Credit Issuer, in the case of fees payable to it. Fees paid shall not be refundable under any circumstances.

2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) and the Unused Fee shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan or other Loan Obligation not paid when due for the day on which the Loan is made or such Loan Obligation is due and unpaid, and shall not accrue on a Loan, or any portion thereof, or such Loan Obligation for the day on which the Loan, or such portion thereof, or Loan Obligation is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. 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 Borrower Agent and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.11 Evidence of Debt.

(a) Loan Account. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Administrative Agent (the “Loan Account”) in the ordinary course of business. In addition, each Lender may record in such Lender’s internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Loan Obligations due to such Lender. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Loan Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the

Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) Account Records. In addition to the accounts and records referred to in (a) above, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; the Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. Subject to Section 2.14, Section 9.03 and payments made during a Dominion Trigger Period from the Concentration Account, the Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Presumptions by Administrative Agent.

(i) Funding by Lenders. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of SOFR Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower. Unless the Administrative Agent shall have received notice from the Borrower Agent prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders, the Letter of Credit Issuer or the Swing Line Lender hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may (but shall not be required to) in reliance upon such assumption, distribute to the Appropriate Lenders the amount due. With respect to any payment that the Administrative Agent makes to any Lender, the Letter of Credit Issuer, the Swing Line Lender or any other Secured Party as to which the Administrative Agent determines (in its sole and absolute discretion) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made the corresponding payment to the Administrative Agent; (2) the Administrative Agent has made a payment in

excess of the amount(s) received by it from Borrowers either individually or in the aggregate (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Secured Parties severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Secured Party, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or any Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article V are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Credit Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, Letter of Credit Borrowings, interest and fees then due hereunder, such funds shall be applied as provided in Section 2.06(c).

2.13 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise (other than in connection with a Supplemental Facility), obtain payment in respect of (a) the Loan Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Loan Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Loan Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Loan Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) the Loan Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Loan Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Loan Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Loan Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and subparticipations in Letter of Credit Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Loan Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of any Loan Party 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), (B) the application of Cash Collateral provided for in [Section 2.16](#), or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in Letter of Credit Obligations or Swing Line Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Among Lenders.

(a) The amount of each Revolving Credit Lender's Applicable Revolving Credit Percentage of outstanding Revolving Credit Loans shall be computed weekly (or more frequently in the Administrative Agent's discretion) and such amount shall be adjusted upward or downward based on all Revolving Credit Loans and repayments of Revolving Credit Loans received by the Administrative Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Administrative Agent.

(b) The Administrative Agent shall deliver to each of the Revolving Credit Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Credit Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Revolving Credit Lender its Applicable Percentage of repayments, and (ii) each Revolving Credit Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Revolving Credit Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the Revolving Credit Exposure of each Revolving Credit Lender shall be equal to such Revolving Credit Lender's Applicable Percentage of the Total Revolving Credit Outstandings as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Revolving Credit Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Revolving Credit Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Revolving Credit Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation plus any reasonable administrative, processing, or similar fees customarily charged by the Administrative Agent in connection with the foregoing.

2.15 Nature and Extent of Each Borrower's Liability.

(a) Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for all Obligations, except Excluded Swap Obligations, and all agreements under the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until the Facility Termination Date, 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 Borrower is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by the Administrative Agent or any Lender with respect thereto; (iii) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by the Administrative Agent or any Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Borrower; (v) any election by the Administrative Agent or any Lender in proceeding under Debtor Relief Laws for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of the Administrative Agent or any Lender against any Borrower for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal

(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 the Administrative Agent or Lenders to marshal assets or to proceed against any Borrower, 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 full payment of all Obligations. It is agreed among each Borrower, the Administrative Agent and Lenders that the provisions of this Section 2.15 are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, the Administrative Agent and Lenders would decline to make Loans and issue Letters of Credit. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) The Administrative Agent and Lenders 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 2.15. If, in taking any action in connection with the exercise of any rights or remedies, the Administrative Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any applicable Laws pertaining to “election of remedies” or otherwise, each Borrower consents to such action and waives any claim of forfeiture of such rights or remedies based upon it, even if the action may result in loss of any rights of subrogation that such Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of the Administrative Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other 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 nonjudicial 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 Person. The 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 the Administrative Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether the 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 2.15, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which the Administrative Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Borrower’s liability under this Section 2.15 shall be limited to the greater of (i) all amounts for which such Borrower is primarily liable, as described below, and (ii) such Borrower’s Allocable Amount.

(ii) If any Borrower makes a payment under this Section 2.15 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 prior to 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 2.15 without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(iii) Each Loan Party that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this Section 2.15 voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Payment in Full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Loan Party for all purposes of the Commodity Exchange Act.

(d) Direct Liability; Separate Borrowing Availability. Nothing contained in this Section 2.15 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 re-loaned or otherwise transferred to, or for the benefit of, such Borrower), Letter of Credit 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. The Administrative Agent and Lenders shall have the right, at any time in their discretion, to condition Revolving Credit Loans and Letters of Credit upon a separate calculation of borrowing availability consistent with the Borrowing Base for each Borrower and to restrict the disbursement and use of such Revolving Credit Loans and Letters of Credit to such Borrower.

(e) Joint Enterprise. Each Borrower has requested that the Administrative Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. The Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. The Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the Revolving Credit Facility, all to their mutual advantage. The Borrowers acknowledge that the Administrative Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.

(f) Subordination. Each Loan Party hereby agrees that any intercompany Indebtedness or other intercompany payables, receivables or obligation, or intercompany advances directly or indirectly made by or owed to such Loan Party by any other Loan Party (collectively, "Intercompany Debt"), of whatever nature at any time outstanding shall be subordinate and subject in right of payment to the prior payment in full in cash of the Obligations. Each Loan Party hereby agrees that it will not, while any Event of Default is continuing, accept any payment, including by offset, on any Intercompany Debt until the Facility Termination Date, in each case, except with the prior written consent of the Administrative Agent. In the event that any payment on any Intercompany Debt shall be received by a Loan Party other than as permitted by this Section 2.15(f) before the Facility Termination Date, such Loan Party shall receive such payments and hold the same in trust for, segregate the same from its own assets and shall immediately pay over to, the Administrative Agent for the benefit of the Administrative Agent and the Lenders all such sums to the extent necessary so that the Administrative Agent and the Lenders shall have received Payment in Full, in cash, all Obligations owed or which may become owing. Upon any payment or distribution of any assets of any Loan Party of any kind or character, whether in cash, property or securities by set-off, recoupment or otherwise, to creditors in any liquidation or other winding-up of such Loan Party or in the event of any proceeding under the Debtor Relief Laws, the Administrative Agent and Lenders shall first be entitled to receive payment in full in cash, in accordance with the terms of the Obligations and of this Agreement, of all amounts payable under or in respect of such Obligations, before any payment or distribution is made on, or in respect of, any Intercompany Debt, in any such proceeding, any distribution or payment, to which the Administrative Agent or any Lender would be entitled except for the provisions hereof shall be paid by such Loan Party, or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution directly to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) to the extent necessary to pay all such Obligations in full in cash, after giving effect to any concurrent payment or distribution to the Administrative Agent and Lenders (or to the Administrative Agent for the benefit of the Administrative Agent and Lenders).

(g) Borrower Agent.

(i) Each Loan Party hereby irrevocably appoints and designates (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to Administrative Agent or otherwise becoming a Guarantor hereunder shall be deemed to have irrevocably appointed and designated) Purple Innovation, LLC ("Borrower Agent") as its representative and agent and attorney-in-fact

for all purposes under the Loan Documents, including, as applicable, requests for Credit Extensions, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base and financial reports, 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 the Administrative Agent, the Letter of Credit Issuers, Swing Line Lender or any Lender.

(ii) Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any Loan Party by the Borrower Agent shall be deemed for all purposes to have been made by such Loan Party and shall be binding upon and enforceable against such Loan Party to the same extent as if made directly by such Loan Party.

(iii) The Borrower Agent hereby accepts the appointment by each Loan Party hereunder to act as its agent and attorney-in-fact.

(iv) The Administrative Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower or other Loan Party. The Administrative Agent and Lenders may give any notice to or communication with a Loan Party hereunder to the Borrower Agent on behalf of such Loan Party. Each of the Administrative Agent, the Letter of Credit Issuers and the Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Loan Party agrees (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to Administrative Agent or otherwise becoming a Guarantor hereunder shall be deemed to have agreed) that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

2.16 Cash Collateral.

(a) Certain Credit Support Events. If (i) the Letter of Credit Issuer has honored any full or partial drawing request under any Letter of Credit upon presentation and such drawing has resulted in an Letter of Credit Borrowing, (ii) as of the Letter of Credit Expiration Date, any Letter of Credit Obligation for any reason remains outstanding, (iii) any Protective Advance shall not have been funded by the Lenders upon demand by the Administrative Agent, (iv) the Borrowers shall be required to provide Cash Collateral pursuant to Section 9.02 or (v) there shall exist a Defaulting Lender, the Borrowers shall immediately (in the case of clause (iv) above) or within one (1) Business Day (in all other cases) following any request by the Administrative Agent or the Letter of Credit Issuer, provide Cash Collateral in an amount equal to the Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (v) above, after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. The Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Letter of Credit Issuer and the Lenders, and agree to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.16(c). If at any time the Administrative Agent determines that Cash Collateral is less than the Minimum Collateral Amount or otherwise deficient for any reason, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, non-interest bearing deposit accounts at BMO.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided in respect of Letters of Credit, Swing Line Loans or Protective Advances shall be held and applied to the specific Letter of Credit Obligations, Swing Line Loans or Protective Advances (including any the Defaulting Lender's obligation to fund participations in respect thereof) for which the Cash Collateral was so provided (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Credit Lender (or, as appropriate, its

assignee following compliance with Section 11.06(b)(vi)) or (ii) the determination by the Administrative Agent and the Letter of Credit Issuer that there exists excess Cash Collateral.

2.17 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that 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, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders", "Required Supermajority Lenders" and Section 11.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the Letter of Credit Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the Letter of Credit Issuer's and the Administrative Agent's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16; *fourth*, as the Borrower Agent 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 the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower Agent, to be held in a 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 the Letter of Credit Issuer's and the Administrative Agent's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit and Protective Advances; *sixth*, in the case of a Defaulting Lender under any Facility, to the payment of any obligations owing to the other Lenders under such Facility (including the Letter of Credit Issuer or Swing Line Lender) as a result of any judgment of a court of competent jurisdiction obtained by any Lender under such Facility (including the Letter of Credit Issuer or Swing Line Lender) against such Defaulting Lender as a result of such 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 the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 5.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Letter of Credit Obligations owed to, all Non-Defaulting Lenders under the applicable Facility on a pro rata basis (and ratably among all applicable Facilities computed in accordance with the Defaulting Lenders' respective funding deficiencies) prior to being applied to the payment of any Loans of, or Letter of Credit Obligations owed to, such Defaulting Lender under the applicable Facility until such time as all Loans and funded and unfunded participations in Letter of Credit Obligations, Swing Line Loans and Protective Advances are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.17(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 2.17(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any Unused Fee payable pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender). Each Defaulting Lender which is a Revolving Credit Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16. With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to this clause (iii), the Borrowers shall (A) pay to each Non-Defaulting Lender which is a Revolving Credit Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Letter of Credit Issuer the amount of any such fee otherwise payable

to such Defaulting Lender to the extent allocable to such Letter of Credit Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letter of Credit Obligations, Swing Line Loans and Protective Advances shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that (x) the conditions set forth in Section 5.02 are satisfied at the time of such reallocation (and, unless the Borrower Agent shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. 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.

(b) Defaulting Lender Cure. If the Borrower Agent, the Administrative Agent, the Swing Line Lender and the Letter of Credit Issuer, agree in writing that a Lender is no longer a Defaulting Lender, the 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 Revolving Credit Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.17(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 the Borrowers while that Lender was a Defaulting Lender; and 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.

2.18 Increase in Revolving Credit Commitments.

(a) Request for Increase. Provided there exists no Default, upon notice to and with the written consent of the Administrative Agent (which shall promptly notify the applicable Revolving Credit Lenders), the Borrower Agent may from time to time request an increase in the Aggregate Revolving Credit Commitments by an amount (for all such requests) not exceeding \$20,000,000 (each such increase, a "Commitment Increase"); provided that (i) any such request for an increase shall be in a minimum amount of \$5,000,000 in the aggregate or, if less, the entire unutilized amount of the maximum amount of all such requests set forth above and (ii) no more than three (3) such requests shall be made during the term of this Agreement. At the time of sending such notice, the Borrower Agent (in consultation with the Administrative Agent) shall specify the time period within which each applicable Revolving Credit Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the applicable Revolving Credit Lenders).

(b) Revolving Credit Lender Elections to Increase. Each Revolving Credit Lender shall notify the Administrative Agent within such time period whether or not it agrees to commit to a portion of the requested increase of the Revolving Credit Facility and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage. Any Revolving Credit Lender not responding within such time period shall be deemed to have declined to commit to any portion of the requested increase.

(c) Notification by Administrative Agent; Additional Revolving Credit Lenders. The Administrative Agent shall notify the Borrower Agent of the Revolving Credit Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent (which approval shall not be unreasonably withheld), the Borrower Agent may also invite additional Eligible Assignees to become Revolving Credit Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel (each such Eligible Assignee issuing a commitment, executing and delivering such joinder agreement and becoming a Revolving Credit Lender, an "Additional Commitment Lender"), provided, however, that without the consent of the Administrative Agent, at no time shall the Commitment of any Additional Commitment Lender be less than \$5,000,000.

(d) Effective Date and Allocations. If the Aggregate Revolving Credit Commitments are increased in accordance with this Section 2.18, the Administrative Agent and the Borrower Agent shall determine the effective date (the “Increase Effective Date”) and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower Agent and the Revolving Credit Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, (i) the Borrower Agent shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) certifying that, before and after giving effect to such increase, the representations and warranties contained in Article VI and in the other Loan Documents, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.18, the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a), (b) and (c), respectively, of Section 7.01, (ii) the Borrowers, the Administrative Agent, and any Additional Commitment Lender shall, to the extent applicable, have executed and delivered a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel; (iii) the Borrowers shall have paid such fees and other compensation to the Revolving Credit Lenders increasing their Revolving Credit Commitments and to the Additional Commitment Lenders as the Borrowers and such Lenders and Additional Commitment Lenders shall agree; (iv) the Borrowers shall have paid such arrangement fees, if any, to the Administrative Agent as the Borrowers and the Administrative Agent may agree; (v) other than the fees and compensation referred to in clauses (iii) and (iv) above, the Commitment Increase shall be on the same terms and pursuant to the same documentation applicable to the existing Revolving Credit Commitments; (vi) the Borrowers shall deliver to the Administrative Agent (A) an opinion or opinions, in form and substance reasonably satisfactory to the Administrative Agent, from counsel to the Loan Parties reasonably satisfactory to the Administrative Agent and dated such date and (B) a certification from the Borrower Agent, or other evidence reasonably satisfactory to the Administrative Agent, that such increase is permitted under the Term Loan Documents and the Intercreditor Agreement and any other material Indebtedness; (viii) the Borrowers, the Lenders increasing their Commitments and each Additional Commitment Lender shall have delivered such other instruments, documents and agreements as the Administrative Agent may reasonably have requested; and (ix) no Default or Event of Default exists or shall result therefrom. The Revolving Credit Loans outstanding on the Increase Effective Date shall be reallocated and adjusted between and among the applicable Lenders, and the Borrowers shall pay any additional amounts required pursuant to Section 3.05 resulting therefrom, to the extent necessary to keep the outstanding applicable Revolving Credit Loans ratable among the applicable Lenders with any revised Applicable Percentages, as applicable, arising from any nonratable increase in the applicable Revolving Credit Loans under this Section 2.18.

(f) Conflicting Provisions. This Section 2.18 shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require the Loan Parties or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower Agent or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Letter of Credit Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Tax Indemnification by the Borrowers.

(i) Without limiting the provisions of subsection (a) or (b) above, each Loan Party shall, and does hereby, indemnify the Administrative Agent, each Lender and the Letter of Credit Issuer, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Loan Parties or the Administrative Agent or paid by the Administrative Agent, such Lender or the Letter of Credit Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Loan Party shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the Letter of Credit Issuer for any reason fails to pay to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower Agent by a Lender or the Letter of Credit Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the Letter of Credit Issuer, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and the Letter of Credit Issuer shall, and does hereby, indemnify the Loan Parties and the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrowers or the Administrative Agent) incurred by or asserted against the Loan Parties or the Administrative Agent by any Governmental Authority as a result of the failure by such Lender or the Letter of Credit Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the Letter of Credit Issuer, as the case may be, to the Borrower Agent or the Administrative Agent pursuant to subsection (e). Each Lender and the Letter of Credit Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the Letter of Credit Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the Letter of Credit Issuer and the occurrence of the Facility Termination Date.

(d) Evidence of Payments. Upon request by the Borrower Agent or the Administrative Agent, as the case may be, after any payment of Taxes by the Loan Parties or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower Agent shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower Agent, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower Agent or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Borrower Agent and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower Agent or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably

requested information as will permit the Borrower Agent or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Loan Parties pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if a Borrower is resident for tax purposes in the United States,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower Agent and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower Agent or the Administrative Agent as will enable the Borrower Agent or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower Agent and the 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 request of the Borrower Agent or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN-E (or, if applicable W-8BEN) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of Internal Revenue Service Form W-8ECI,

(III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(IV) 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 to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower Agent or the Administrative Agent to determine the withholding or deduction required to be made; and

(C) 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 the Borrower Agent and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by any Borrower or the 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 any Borrower or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of this Section 3.01, "Laws" shall include FATCA

(iii) Each Lender shall promptly (A) notify the Borrower Agent and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be

materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Loan Parties or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the Letter of Credit Issuer, or have any obligation to pay to any Lender or the Letter of Credit Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the Letter of Credit Issuer, as the case may be. If the Administrative Agent, any Lender or the Letter of Credit Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by any Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent, such Lender or the Letter of Credit Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Administrative Agent, such Lender or the Letter of Credit Issuer, agrees to repay the amount paid over to any Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the Letter of Credit Issuer in the event the Administrative Agent, such Lender or the Letter of Credit Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the Letter of Credit Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower Agent (through the Administrative Agent) (an “Illegality Notice”), (a) any obligation of the Lenders to make SOFR Loans, and any right of any Borrower to continue SOFR Loans or to convert Base Rate Loans to SOFR Loans, shall be suspended, and (b) the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of “Base Rate”, in each case until each affected Lender notifies the Administrative Agent and the Borrower Agent that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrower Agent shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans to Base Rate Loans (the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of “Base Rate”), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

3.03 Inability to Determine Rates; Effect of Benchmark Transition Event.

(a) Inability to Determine Rates. Subject to Section 3.03(b), if, on or prior to the first day of any Interest Period for any SOFR Loan:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Adjusted Term SOFR cannot be determined pursuant to the definition thereof, or

(ii) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent:

then in each case the Administrative Agent will promptly so notify the Borrower Agent and each Lender. Upon notice thereof by the Administrative Agent to the Borrower Agent, any obligation of the Lenders to make or continue SOFR Loans shall be suspended (to the extent of the affected SOFR Loans and, in the case of a SOFR Loan, the affected Interest Periods) until the Administrative Agent (with

respect to clause (ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans and, in the case of a SOFR Loans, the affected Interest Periods) or, failing that, the Borrowers will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amounts so converted, together with any additional amounts required pursuant to Section 3.05(a) of this Agreement.

(b) Effect of Benchmark Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) Benchmark Replacement. If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (a) 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 other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (b) 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 other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis. For the avoidance of doubt, no Swap Contract shall be deemed to be a “Loan Document” for purposes of this Section 3.03.

(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.

(iii) Notice; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower Agent 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 Borrower Agent of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.03(b)(iv) and 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 3.03(b), 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 3.03(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement) (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) 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 (2) 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 (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) 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 Borrower Agent’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower Agent may revoke any pending request for a Borrowing of a SOFR Loan, or conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower Agent will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base 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 Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

3.04 Increased Costs.

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

(i) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D)), 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 the Letter of Credit Issuer;

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(ii) subject any Lender or the Letter of Credit Issuer 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) with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit, or any SOFR Loan made by it, or change the basis of taxation of payments to such Lender or the Letter of Credit Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the Letter of Credit Issuer); or

(iii) impose on any Lender or the Letter of Credit Issuer any other condition, cost or expense (other than taxes) affecting this Agreement or SOFR 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 of making or maintaining any Loan the interest on which is determined by reference to Term SOFR (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the Letter of Credit Issuer issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Letter of Credit Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the Letter of Credit Issuer, the Loan Parties will pay to such Lender or the Letter of Credit Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the Letter of Credit Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the Letter of Credit Issuer determines that any Change in Law affecting such Lender or the Letter of Credit Issuer or any Lending Office of such Lender or such Lender’s or the Letter of Credit Issuer’s holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s or the Letter of Credit Issuer’s capital or on the capital of such Lender’s or the Letter of Credit Issuer’s holding company, if any, as a consequence of this Agreement, the Revolving Credit Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Letter of Credit Issuer, to a level below that which such Lender or the Letter of Credit Issuer or such Lender’s or the Letter of Credit Issuer’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s or the Letter of Credit Issuer’s policies and the policies of such Lender’s or the Letter of Credit Issuer’s holding company with respect to capital adequacy), then from time to time pursuant to subsection (c) below the Loan Parties will pay to

such Lender or the Letter of Credit Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the Letter of Credit Issuer or such Lender's or the Letter of Credit Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the Letter of Credit Issuer setting forth the amount or amounts necessary to compensate such Lender or the Letter of Credit Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower Agent shall be conclusive absent manifest error. The Loan Parties shall pay such Lender or the Letter of Credit 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 the Letter of Credit Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the Letter of Credit Issuer's right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Lender or the Letter of Credit Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the Letter of Credit Issuer, as the case may be, notifies the Loan Parties of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Letter of Credit 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 nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any conversion, payment or prepayment of any SOFR Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any SOFR Loan on the date or in the amount notified by the Borrower Agent; or

(c) any assignment of a SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower Agent pursuant to Section 11.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each SOFR Loan made by it at SOFR for such Loan by a matching deposit or other borrowing in the SOFR market for a comparable amount and for a comparable period, whether or not such SOFR Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender, the Letter of Credit Issuer or any Governmental Authority for the account of any Lender or the Letter of Credit Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the Letter of Credit Issuer, as applicable, shall 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 or the Letter of Credit Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the Letter of Credit Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the Letter of Credit Issuer, as the case may be. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the Letter of Credit Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive the resignation of the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender, the replacement of any Lender and the occurrence of the Facility Termination Date.

ARTICLE IV SECURITY AND ADMINISTRATION OF COLLATERAL

4.01 Security. As security for the full and timely payment and performance of all Obligations, Borrower Agent shall, and shall cause each other Loan Party to, on or before the Closing Date, do or cause to be done all things necessary in the opinion of the Administrative Agent and its counsel to grant to the Administrative Agent for the benefit of the Secured Parties a duly perfected first priority security interest in all Collateral (except as expressly permitted hereunder or in the Intercreditor Agreement), and subject to no prior Lien or other encumbrance or restriction on transfer, except as expressly permitted hereunder and in the Intercreditor Agreement. Without limiting the foregoing, on the Closing Date, Borrower Agent shall deliver, and shall cause each Loan Party to deliver, to the Administrative Agent, in form and substance reasonably acceptable to the Administrative Agent, (a) the Security Agreement, which shall pledge to the Administrative Agent for the benefit of the Secured Parties certain personal property of the Borrowers and the other Loan Parties more particularly described therein and (b) Uniform Commercial Code financing statements in form, substance and number as requested by the Administrative Agent, reflecting the Lien in favor of the Secured Parties on the Collateral, and shall take such further action and deliver or cause to be delivered such further documents as required by the Security Instruments or otherwise as the Administrative Agent may request to effect the transactions contemplated by this Article IV.

4.02 Collateral Administration.

(a) Administration of Accounts.

(i) Records and Schedules of Accounts. Each Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to the Administrative Agent sales, collection, reconciliation and other reports in form satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may request.

(ii) Taxes. If an Account of any Borrower includes a charge for any Taxes, Administrative Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Borrower and to charge Borrowers therefor; provided, however, that neither the Administrative Agent nor Lenders shall be liable for any Taxes that may be due from Borrowers or with respect to any Collateral.

(iii) Account Verification. Whether or not a Default or Event of Default has occurred and is continuing, the Administrative Agent shall have the right at any time, in the name of the Administrative Agent, any designee of the Administrative Agent or (during the continuance of any Event of Default) any Borrower, to verify the validity, amount or any other matter relating to any Accounts of Borrowers by mail, telephone or otherwise; provided that if no Default or Event of Default is outstanding, the Administrative Agent shall give the Borrower at least two (2) Business Days notice prior to contacting any customer to verify any matter relating to any Accounts whereby the Borrowers will assist in facilitating customary account conformation procedures on behalf of and for exclusive benefit of the Administrative Agent. Borrowers shall cooperate fully with the Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

(iv) Proceeds of Collateral. Subject to the Post-Closing Agreement, Borrowers shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Controlled Deposit Account (or a lockbox relating to a Controlled Deposit Account). If any Borrower or Subsidiary receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for the Administrative Agent and promptly (not later than the next Business Day but subject to the Post-Closing Agreement) deposit same into a Controlled Deposit Account.

(v) Extensions of Time for Payment. In addition, upon the occurrence and during the continuance of an Event of Default, other than in the Ordinary Course of Business and in amounts which are not material to such Borrower, each Borrower will not (i) grant any extension of the time for payment of any Account, (ii) compromise or settle any Account for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Account, (iv) allow any credit or discount whatsoever on any Account or (v) amend, supplement or modify any Account in any manner that could adversely affect the value thereof.

(b) Administration of Inventory.

(i) Records and Reports of Inventory. Each Borrower shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may reasonably request. Each Borrower shall conduct a periodic cycle count on a monthly basis consistent with historical practices, and shall provide to the Administrative Agent a report based on each such count promptly upon completion thereof, together with such supporting information as the Administrative Agent may reasonably request. The Administrative Agent may participate in and observe each periodic cycle count. The Administrative Agent, in its reasonable discretion if any Event of Default is continuing, may cause physical inventories or additional such periodic cycle counts to be taken as the Administrative Agent determines (each, at the expense of the Loan Parties).

(ii) Returns of Inventory. No Borrower shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default or Overadvance exists or would result therefrom; and (c) the Administrative Agent is promptly notified if the aggregate value of all Inventory returned in any month exceeds \$1,000,000.

(iii) Acquisition, Sale and Maintenance. No Borrower shall acquire or accept any Inventory on consignment or approval, and shall take all steps to assure that all Inventory is produced in accordance with applicable Law, including the FLSA. No Borrower shall sell any Inventory on consignment or approval or any other basis (for the avoidance of doubt, this does not include sales utilizing the services of fulfillment companies, such as Amazon), under which the customer may return or require a Borrower to repurchase such Inventory except returns by customers pursuant to the Borrowers' customer return policy in the Ordinary Course of Business. The Borrowers shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all applicable Laws, and shall make current rent payments (within applicable grace periods provided for in leases) at all leased locations where any Collateral is located.

(c) Credit Card Notifications. On the Closing Date, deliver to the Administrative Agent copies of notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit G which have been executed on behalf of such Loan Party for delivery to such Loan Party's Credit Card Issuers and Credit Card Processors listed on Schedule 6.19 (with such delivery being effected promptly following the Closing Date, and evidence of such delivery received by Administrative Agent within five (5) Business Days following the Closing Date). So long as no Dominion Trigger Period is continuing, the Loan Parties may add or replace Credit Card Processors and Credit Card Issuers and shall upon such addition or replacement provide to Administrative Agent no later than five (5) Business Days after the time of entering into such new arrangements, applicable Credit Card Notifications.

4.03 After Acquired Property; Further Assurances.

(a) New Deposit Accounts and Securities Accounts. Concurrently with or prior to the opening of any Deposit Account, Securities Account or Commodity Account by any Loan Party, other than any Excluded Deposit Account, such Loan Party shall deliver to the Administrative Agent a Control Agreement covering such Deposit Account, Securities Account or Commodity Account, duly executed by such Loan Party, the Administrative Agent and the applicable Controlled Account Bank, securities intermediary or financial institution at which such account is maintained.

(b) Future Locations Subject to Material Third-Party Agreements. With respect to any location of Collateral subject to a Material Third-Party Agreement entered into after the Closing Date, each Loan Party shall use commercially reasonable efforts to provide the Administrative Agent with Lien Waivers with respect to the premises subject to such Material Third-Party Agreements. Loan Parties acknowledge that if such Lien Waivers are not delivered, then, at the election of the Administrative Agent, all of the Collateral at such locations may be deemed ineligible for inclusion in the Borrowing Base or the Administrative Agent may establish a Rent and Charges Reserve for such location.

(c) Acquired Real Property. If any Loan Party acquires, owns or holds an interest in any fee-owned Real Property not constituting Excluded Real Property, the Borrower Agent will promptly (and in any event within ten (10) days of the acquisition thereof (or such longer period as the Administrative Agent may agree)) notify the Administrative Agent in writing of such event, identifying the property or interests in question, and, the Loan Party will, or will cause such Subsidiary to, within sixty (60) days or such longer period as the Administrative Agent may reasonably agree, (i) deliver to the Administrative Agent, in each case in form and substance reasonably satisfactory to the Administrative Agent, Mortgages and Mortgage Related Documents with respect to such Real Property.

(d) UCC Authorization. The Administrative Agent is hereby irrevocably authorized to execute (if necessary) and file or cause to be filed, with or if permitted by applicable Law without the signature of any Borrower appearing thereon, all UCC or PPSA financing statements reflecting any Borrower as “debtor” and the Administrative Agent as “secured party”, and continuations thereof and amendments thereto, as the Administrative Agent reasonably deems necessary or advisable to give effect to the transactions contemplated hereby and by the other Loan Documents.

4.04 Cash Management.

(a) Controlled Deposit Accounts. On or prior to the Closing Date but subject to the Post-Closing Agreement, enter into a Control Agreement with respect to each Deposit Account listed on Schedule 6.19, other than Excluded Deposit Accounts, which shall include all lockboxes and related lockbox accounts used for the collection of Accounts. Each Loan Party agrees that it shall take all commercially reasonable steps necessary to ensure that all payments in respect of Accounts or other Collateral be paid to a Controlled Deposit Account in its name, including ensuring that all invoices rendered and other requests made by any Loan Party for payment in respect of Accounts contain a written statement directing payment to be made to a Controlled Deposit Account in its name. The Borrower Agent shall request the Controlled Account Banks to deliver bank statements and/or other reports to the Administrative Agent not less often than monthly, setting forth all amounts deposited in each Controlled Deposit Account to ensure the proper transfer of funds as set forth above. All remittances received by any Loan Party on account of Accounts, together with the proceeds of any other Collateral, shall be held as security in trust for the benefit of the Administrative Agent and the benefit of Lenders, by such Loan Party and, subject to the Post-Closing Agreement, such Loan Party shall immediately deposit same in kind in a Controlled Deposit Account. The Administrative Agent retains the right at all times during the continuance of a Default or an Event of Default to notify Account Debtors that a Loan Party's Accounts have been assigned to the Administrative Agent and to collect such Loan Party's Accounts directly in its own name, or in the name of the Administrative Agent's agent, and to charge collection costs and expenses, including reasonable attorneys' fees, to the Loan Account.

(b) Concentration Account. Each Control Agreement with respect to a Controlled Deposit Account shall require that, during a Dominion Trigger Period, the Controlled Account Bank transfer all cash receipts and other collections by ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account maintained by the Administrative Agent at BMO (the “Concentration Account”). The Concentration Account shall at all times be under the sole dominion and control of the Administrative Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Concentration Account shall be applied as provided in Section 4.04(c) below. In the event that, notwithstanding the provisions of this Section 4.04, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections described above, such proceeds and collections shall be held in trust by such Loan Party for the Administrative Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, subject to the Post-Closing Agreement, be deposited into a Controlled Deposit Account, or during a Dominion Trigger Period, the Concentration Account, or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent.

(c) Application of Funds in the Concentration Account. All funds received in the Concentration Account in immediately available funds shall, subject to Section 9.03, be applied on a daily basis first, to the Letter of Credit Borrowings and the Swing Line Loans, second, to the outstanding Revolving Credit Loans and third, to any fees, expenses, costs or reimbursement obligations due and owing to the Agent or the Lenders. All funds received in the Concentration Account that are not immediately available funds (checks, drafts and similar forms of payment) shall be deemed applied by Administrative Agent on account of the Obligations (subject to final payment of such items) in accordance with the foregoing sentence on the first (1st) Business Day after receipt by Administrative Agent of such items in Administrative Agent's account located in Chicago, Illinois. If as the result of such application of funds a credit balance exists in the Loan Account, such credit balance shall not accrue interest in favor of Borrowers but shall, so long as no Default or Event of Default then exists, be disbursed to Borrowers or otherwise at Borrower Agent's direction, upon Borrower Agent's request. Upon and during the continuance of any Event of Default, the Administrative Agent may, at its option, offset such credit balance against any of the Obligations or hold such credit balance as Collateral for the Obligations.

(d) Controlled Securities Accounts. On or prior to the Closing Date, enter into a Control Agreement with respect to each Securities Account and Commodity Account listed on part (b) of Schedule 6.19. The Borrower Agent shall request the applicable broker, financial institution or other financial intermediary to deliver account statements and/or other reports to the Administrative Agent not less often than monthly, setting forth all assets, including securities entitlements, financial assets or other amounts, held in each Securities Account or Commodity Account.

4.05 Information Regarding Collateral. Each Borrower represents, warrants and covenants that Schedule 4.05 sets forth as of the Closing Date, (a) the exact legal name, jurisdiction of formation, organizational identification number, chief executive office and any trade name or other trade style of each Loan Party and each of its Subsidiaries, (b) each Person that has effected any merger or consolidation with a Loan Party or sold, contributed or transferred to a Loan Party any property constituting Collateral at any time since, in each case, July 1, 2018 (excluding Persons making sales in the ordinary course of their businesses to a Loan Party of property constituting Inventory in the hands of such seller), (c) any prior legal name, jurisdiction of formation, organizational identification number, trade name or other trade style or location of the chief executive office of each Loan Party at any time since July 1, 2018, and (d) each location within the United States in which material goods constituting Collateral are located as of the Closing Date (together with the name of each owner of the property located at such address if not the applicable Loan Party, a summary description of the relationship between the applicable Loan Party and such Person and with respect to Inventory or other property (other than, to the extent that they are not Borrowing Base Assets, floor samples and office equipment such as desks, electronics, and other similar business personal property) the maximum approximate book or market value of such Collateral held or to be held at such location). The Company shall not change, and shall not permit any other Loan Party to change, its name, jurisdiction of formation (whether by reincorporation, merger or otherwise), the location of its chief executive office or any location specified in clause (d) of the immediately preceding sentence (other than locations that solely contain floor samples and related Inventory with a Cost at such location of less than \$40,000, and office equipment such as desks, electronics and other similar business personal property), or use or permit any other Loan Party to use, any additional trade name or other trade style, except upon giving not less than thirty (30) days' prior written notice to the Administrative Agent and taking or causing to be taken all such action at Borrowers' or such other Loan Parties' expense as may be reasonably requested by the Administrative Agent to perfect or maintain the perfection and priority of the Lien of the Administrative Agent in the Collateral.

ARTICLE V

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

5.01 Conditions of Initial Credit Extension. The obligation of each Lender and the Letter of Credit Issuer to make any initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following items (except those items that are expressly permitted to be delivered after the Closing Date pursuant to the Post-Closing Agreement), each properly executed by a Responsible Officer of the applicable Loan Party, each dated as of the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and its legal counsel:

- (i) executed counterparts of this Agreement and each of the Loan Documents;
- (ii) Notes executed by the Borrowers in favor of each Lender requesting a Note;

(iii) a Secretary's certificate for each Loan Party certifying as to (A) true and complete copies of all Organization Documents of such Loan Party attached thereto, (B) resolutions of the Board of Directors or other organizational action authorizing execution, delivery and performance of all Loan Documents to which such Loan Party is a party, and (C) incumbency of officers (including specimen signatures) evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) certification from any applicable Governmental Authority as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization and in any other jurisdiction in which the failure to be so qualified could reasonably be expected to have a Material Adverse Effect, including certificates of good standing and qualification to engage in business in each applicable jurisdiction;

(v) a favorable opinion of Finn, Dixon & Herling LLP, counsel to the Loan Parties, each addressed to the Administrative Agent and each Lender and their successors and assigns, as to the matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(vi) certificates of Responsible Officers of the Borrower Agent or the applicable Loan Parties either (A) identifying all consents, licenses and approvals required in connection with the execution, delivery and performance by each Borrower and the validity against each such Loan Party of the Loan Documents to which it is a party, and stating that such consents, licenses and approvals shall be in full force and effect, and attaching true and correct copies thereof or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by a Responsible Officer of the Borrower Agent certifying (A) that the conditions specified in Sections 5.02(a) and 5.02(b) have been satisfied and (B) as to the matters described in Section 5.01(d);

(viii) (A) audited financial statements of Holdings and its Subsidiaries for each of the three fiscal years immediately preceding the Closing Date, (B) unaudited interim financial statements for Holdings and its Subsidiaries as of May 31, 2023, (C) preliminary unaudited interim financial statements for Holdings and its Subsidiaries as of June 30, 2023, and (D) financial projections (including but not limited to financial forecast models and liquidity forecasts) of Holdings and its Subsidiaries on a monthly basis for the remainder of 2023 and for 2024 and on an annual basis for 2025;

(ix) a certificate signed by the Chief Financial Officer or the Chief Accounting Officer of the Borrower Agent certifying that, after giving effect to the entering into of the Loan Documents and the consummation of all of the Transactions, (A) each Borrower is Solvent and (B) the Loan Parties, taken as a whole, are Solvent;

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

(xi) an initial Borrowing Base Certificate;

(xii) initial written notice of Borrowing;

(xiii) delivery of Uniform Commercial Code financing statements, suitable in form and substance for filing in all places required by applicable law to perfect the Liens of the Administrative Agent under the Security Instruments as a first priority Lien as to items of Collateral (subject to the Intercreditor Agreement) in which a security interest may be perfected by the filing of financing statements, and such other documents and/or evidence of other actions as may be reasonably necessary under applicable law to perfect the Liens of the Administrative Agent under such Security Instruments as a first priority Lien in and to such other Collateral (subject to the Intercreditor Agreement) as the Administrative Agent may require;

(xiv) Uniform Commercial Code search results showing only those Liens as are acceptable to the Administrative Agent and Lenders;

(xv) evidence of the payment in full and cancellation of the Existing Agreement, including terminations of Uniform Commercial Code financing statements filed in connection with the Existing Agreement and other evidence of lien releases and other related matters on terms acceptable to the Administrative Agent;

(xvi) evidence satisfactory to the Administrative Agent of the consummation (in compliance with all applicable laws and regulations, with the receipt of all material governmental, shareholder and third party consents and approvals relating thereto) of the Transactions;

(xvii) copies of the Term Loan Documents, all certified as true and correct by the Borrower Agent;

(xviii) executed counterparts of the Post-Closing Agreement;

(xix) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the Letter of Credit Issuer, the Swing Line Lender or the Required Lenders may reasonably require.

(b) At least five days prior to the Closing Date, (i) any Borrower that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Borrower and (ii) so long as requested by the Agent or any Lender at least ten days prior to the Closing Date, Borrowers shall have provided to Agent and each requesting Lender the documentation and other information so requested in connection with applicable “know your customer” and Anti-Money Laundering Laws or Anti-Corruption Laws, including the PATRIOT Act.

(c) Administrative Agent and its counsel shall have completed all legal, tax and regulatory due diligence, including without limitation review of all documentation required by bank regulatory authorities under applicable Anti-Corruption Laws and Anti-Money Laundering Laws, the results of which shall be satisfactory to Administrative Agent in its sole discretion.

(d) Any fees required to be paid on or before the Closing Date shall have been, or concurrently with the satisfaction of the requirements in this Section 5.01, will be, paid.

(e) Unless waived by the Administrative Agent, the Borrowers shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such reasonable fees, charges and disbursements as shall constitute its reasonable estimate of such reasonable fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).

(f) The Administrative Agent shall be satisfied that after giving effect to (i) the initial Credit Extension hereunder, (ii) consummation of the Transactions and payment of all fees and expenses in connection therewith and (iii) any payables stretched beyond their customary payment practices, Availability shall be greater than the greater of (x) 30% of the Maximum Borrowing Amount (without giving effect to the Term Loan Push Down Reserve) at such time and (y) \$15,000,000.

(g) The Administrative Agent shall have received a Field Exam and an appraisal of the Loan Parties’ inventory, each in form and substance reasonably satisfactory to the Administrative Agent.

(h) The Administrative Agent’s and each Lender’s respective investment committees shall have approved this Agreement and the transactions contemplated hereby.

(i) The capital structure of the Loan Parties and their Subsidiaries shall be satisfactory to Administrative Agent.

Without limiting the generality of the provisions of Section 10.04, for purposes of determining compliance with the conditions specified in this Section 5.01, each Lender that has signed 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 a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5.02 Conditions to all Credit Extensions. The obligation of each Lender or Letter of Credit Issuer to honor any Request for Credit Extension (other than one requesting only a conversion of Loans to the other Type or a continuation of SOFR Loans) or make the initial Credit Extension hereunder is subject to the following conditions precedent:

(a) The representations and warranties of the Loan Parties contained in Article VI or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or in the case of any representation or warranty subject to a materiality qualifier, true and correct in all respects) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or in the case of any representation or warranty subject to a materiality qualifier, true and correct in all respects) as of such earlier date, and except that for purposes of this Section 5.02(a), the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a), (b) and (c), respectively, of Section 7.01.

(b) No Default shall have occurred and be continuing, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the Letter of Credit Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than one requesting only a conversion of Loans to the other Type or a continuation of SOFR Loans) submitted by the Borrower Agent shall be deemed to be a representation and warranty that the conditions specified above in this Section 5.02 have been satisfied on and as of the date of the applicable Credit Extension. As an additional condition to any Credit Extension, Administrative Agent may request any other information, certification, document, instrument or agreement as it reasonably deems appropriate.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

To induce the Secured Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

6.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary (a) is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as is now being conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and to consummate the Transactions to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i), or (c), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Loan Party is (a) an Affected Financial Institution or (b) a Covered Entity (as defined in Section 11.21(b)).

6.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, and the consummation of the Transactions, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of the Organization Documents of any such Person; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (i) any material Contractual

Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

6.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for those which have been duly obtained, taken, given or made and are in full force and effect and the filing and recording of financing statements and other documents necessary in order to perfect the Liens created by the Security Instruments.

6.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except (a) as rights to indemnification hereunder may be limited by applicable Law and (b) as the enforcement hereof may be limited by any applicable Debtor Relief Laws or by general equitable principles.

6.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material Indebtedness and other liabilities, direct or contingent, of Holdings and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

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(b) The unaudited Consolidated balance sheet of Holdings and its Subsidiaries dated as of May 31, 2023, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for the month then ended (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of Holdings and its Subsidiaries 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.

(c) Since the date of the Audited Financial Statements there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) Each Borrower is Solvent and the Loan Parties, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be 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 any Loan Party.

6.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Loan Party after due investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues, that (a) purport to affect or pertain to this Agreement or any other Loan Document (including the grant and perfection of any Lien under any Security Instrument) or any of the Transactions or (b) except as specifically disclosed in Schedule 6.06, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect. There has been no adverse change in the status, or financial effect on any Loan Party or any Subsidiary thereof, of the matters described on Schedule 6.06.

6.07 No Default. No Loan Party nor any Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred

and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

6.08 Ownership of Property; Liens.

(a) Each Loan Party and each Subsidiary has good title to, or valid leasehold interests in, all its real and personal property material to its business, if any (including the Mortgaged Properties), (i) free and clear of all Liens except for Permitted Liens and (ii) except for minor defects in title that do not materially interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes.

(b) Schedule 6.08 sets forth the address (including street address, county and state) of all Real Property that is owned or subject to a ground lease by the Loan Parties as of the Closing Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Liens. Each ground lease of the Loan Parties is in full force and effect and the Loan Parties are not in default of any material terms thereof.

6.09 Environmental Compliance.

(a) Except as disclosed in Schedule 6.09, no Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law with respect to the Loan Party or any Subsidiary's operations, (ii) has become subject to a pending claim with respect to any Environmental Liability or (iii) has received written notice of any claim with respect to any Environmental Liability except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, (i) none of the properties currently owned or operated by any Loan Party or any Subsidiary thereof is listed or, to the knowledge of the Loan Parties, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and, to the knowledge of the Loan Parties, never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof; (iii) to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Loan Party or Subsidiary in violation of Environmental Laws or, to the knowledge of the Loan Parties, by any other Person in violation of Environmental Laws on any property currently owned or operated by any Loan Party or any Subsidiary thereof.

(c) Except as otherwise set forth on Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, no Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored by any Loan Party or any Subsidiary at, or transported to or from by or on behalf of any Loan Party or any Subsidiary, any property currently owned or operated by any Loan Party or any Subsidiary thereof have, to the knowledge of the Loan Parties, been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

(d) Each Loan Party conducts in the Ordinary Course of Business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof each Loan Party has reasonably concluded that, except as set forth on Schedule 6.09, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as

are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 6.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. Each insurance policy listed on Schedule 6.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

6.11 Taxes. Each Loan Party and its Subsidiaries have filed all federal, state and other tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being Properly Contested and except where the failure to file such returns or reports could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against Holdings or any Subsidiary that would, if made, have a Material Adverse Effect. Neither Holdings nor any Subsidiary thereof is party to any tax sharing agreement.

6.12 ERISA Compliance.

(a) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other federal or state Laws, except as could not reasonably be expected to have a Material Adverse Effect. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service (or, with respect to a prototype plan, can rely on an opinion or advisory letter from the Internal Revenue Service to the prototype plan sponsor) to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Loan Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could 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 or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) No Loan Party nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 6.12 hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

(e) As of the Closing Date that the Borrower is not and will not be 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 the Loans, the Letters of Credit or the Commitments;

6.13 Subsidiaries and Equity Interests. No Loan Party (a) has any Subsidiaries other than those specifically disclosed in part (a) of Schedule 4.05 or created or acquired after the Closing Date in compliance with Section 7.12, or (b) owns any Equity Interests in any other Person other than those specifically disclosed on Schedule 6.13, except, in each case, Subsidiaries acquired or created and equity investments made on or after the Closing Date in compliance with this Agreement and the other Loan Documents. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments and Permitted Liens arising by operation of Law. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments and Permitted Liens arising by operation of Law.

6.14 Margin Regulations; Investment Company Act. No Loan Party is engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), or extending credit for the purpose of purchasing or carrying margin stock. None of the Loan Parties, any Person Controlling any Loan Party, nor any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

6.15 Disclosure. Each Loan Party has disclosed or caused the Borrower Agent to disclose to the Administrative Agent and the Lenders all material agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate (including the Borrowing Base Certificates) or other information furnished (whether in writing or orally) by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), and taken as a whole, 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 they were made, not misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.16 Compliance with Laws. Each Loan Party and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.17 Intellectual Property; Licenses, Etc. Each Loan Party and its Subsidiaries own, or possess the right to use, all of the Intellectual Property (including IP Rights) that are reasonably necessary for the operation of their respective businesses, without known conflict with the IP Rights of any other Person, except to the extent any failure so to own or possess the right to use could not reasonably be expected to have a Material Adverse Effect. To the knowledge of each Loan Party, the operation by each Loan Party and its Subsidiaries of their respective businesses does not infringe upon any IP Rights held by any other Person.

6.18 Labor Matters. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or as set forth on Schedule 6.18, there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. Except as would not reasonably be expected to result in a Material Adverse Effect, the hours worked by and payments made to employees of the Loan Parties comply with the FLSA and any other applicable federal, state, local or foreign Law dealing with such matters. No Loan Party or any of its Subsidiaries has incurred any material liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued

in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 6.18 no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries, except as would not reasonably be expected to result in a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

6.19 Deposit Accounts and Securities Accounts.

(a) Part (a) of Schedule 6.19 sets forth a list of all Deposit Accounts (including Excluded Deposit Accounts) maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each Deposit Account (i) the name and address of the depository; (ii) the name and account number of such Deposit Account; (iii) the type or use of such Deposit Account and (iv) the average balance of such Deposit Account over the prior twelve month period.

(b) Part (b) of Schedule 6.19 sets forth a list of all Securities Accounts and Commodity Accounts maintained by the Loan Parties as of the Closing Date, which Schedule includes with respect to each Securities Account and Commodity Account (i) the name and address of the securities intermediary or institution holding such account; (ii) the name and account number of such account; (iii) a contact person at such securities intermediary or institution and (iv) the average value of assets held in such account over the prior twelve month period.

(c) Part (c) of Schedule 6.19 sets forth a list of all of the Credit Card Agreements and all other agreements, documents and instruments existing on the Closing Date between or among any Loan Party, the Credit Card Issuers, the Credit Card Processors and any of their Affiliates or Related Parties with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party. The Credit Card Agreements constitute all of such agreements necessary for each Loan Party to operate its business as presently conducted with respect to credit cards and debit cards. Borrowers have delivered, or caused to be delivered to the Administrative Agent true, correct and complete copies of all of the Credit Card Agreements.

6.20 Accounts. The Administrative Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by the Loan Parties with respect thereto. Each Borrower warrants, with respect to each Account at the time it is shown as an Eligible Account in a Borrowing Base Certificate, that:

(a) it is genuine and in all respects what it purports to be, and is not evidenced by a judgment;

(b) it arises out of a completed, *bona fide* sale and delivery of goods in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;

(c) it is for a sum certain, maturing as stated in the invoice covering such sale, a copy of which has been furnished or is available to the Administrative Agent on request;

(d) it is not subject to any offset, Lien (other than the Administrative Agent's Lien, the Term Loan Agent's Lien and Permitted Liens arising by operation of Law), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to the Administrative Agent; and it is absolutely owing by the Account Debtor, without contingency in any respect;

(e) no purchase order, agreement, document or applicable Laws restricts assignment of the Account to the Administrative Agent (regardless of whether, under the UCC, the restriction is ineffective) other than customary non-assignment clauses contained in retailer, purchase or supplier agreements, and the applicable Borrower is the sole payee or remittance party shown on the invoice;

(f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized with respect to the 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; and

(g) to each Borrower's knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectability of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to any proceeding under any Debtor Relief Laws, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

6.21 Sanction; Anti-Money Laundering Laws and Anti-Corruption Laws.

(a) None of the Loan Parties nor any of their Controlled Persons nor, to the knowledge of Borrower, any agent, affiliate or representative of any Loan Party or any of their Subsidiaries, is, or is controlled by a Person that is, a Sanctioned Person or currently the subject or target of any Sanctions.

(b) The Loan Parties and each of their Subsidiaries and, to the knowledge of Borrower, each of the Loan Parties' and their Subsidiaries' respective agents, affiliates and representatives, is in compliance with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(c) The Loan Parties and their Subsidiaries have instituted and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties, their Subsidiaries, and their Controlled Persons with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(d) As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

6.22 Brokers. Except as otherwise disclosed in writing to Administrative Agent, no broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

6.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any modification or change in the business relationship of any Loan Party with any customers or suppliers which are, individually or in the aggregate, material to its operations, to the extent that such cancellation, modification or change would reasonably be expected to result in a Material Adverse Effect.

6.24 Material Contracts. Schedule 6.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Administrative Agent on or before the date hereof.

6.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

6.26 Senior Indebtedness. All Obligations including those to pay principal of and interest (including post-petition interest, whether or not allowed as a claim under Debtor Relief Laws) on the Loans and other Obligations, and fees and expenses in connection therewith, are entitled to the benefits of the Subordination Provisions applicable to Subordinated Debt. Each Loan Party acknowledges that the Administrative Agent and each Lender is entering into this Agreement and each Lender is extending its Commitments in reliance upon the Subordination Provisions.

ARTICLE VII AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan Obligation (other than contingent obligations for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, each Loan Party shall, and shall cause each Subsidiary to, or with respect to Sections 7.01, 7.02 and 7.03, the Borrower Agent shall:

7.01 Financial Statements. Deliver to the Administrative Agent and each Lender:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of Holdings or, if earlier, 15 days after the date required to be filed with the SEC, a Consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be audited and accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Administrative Agent (the "Auditor"), which report and opinion shall be prepared in accordance with audit standards of the Public Company Accounting Oversight Board and applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception (except any "going concern" qualification or exception as a result of the maturity of Facility and the Term Loan Facility within the next 12 months) or any qualification or exception as to the scope of such audit and shall include a certificate of the Auditor stating that in making the examination necessary with respect to such audit it has not become aware of any Default in respect of any term, covenant, condition of Section 8.12 or other provision in so far as they relate to accounting matters or, if any such Default shall exist, stating the nature and status of such event;

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(b) quarterly, for the first three fiscal quarters of each fiscal year, as soon as available, but in any event within 50 days after the end of each such fiscal quarter unaudited Consolidated and consolidating balance sheets of Holdings as of the end of such quarter and the related statements of income and cash flow for such quarter and for the portion of the fiscal year then elapsed, on a Consolidated basis for Holdings and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding fiscal year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial condition, results of operations, shareholders equity and cash flows for such quarter and period, subject to normal year-end adjustments and the absence of footnotes;

(c) monthly, as soon as available, but in any event within 30 days after the end of each fiscal month, unaudited Consolidated and consolidating balance sheets of Holdings as of the end of such month and the related statements of income and cash flow for such month and for the portion of the fiscal year then elapsed, on a Consolidated basis for Holdings and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding fiscal year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial condition, results of operations and cash flows for such month and period, subject to normal year-end adjustments and the absence of footnotes; and

(d) as soon as available but not later than 60 days after the end of each fiscal year, annual financial projections of Holdings and its Subsidiaries on a Consolidated basis, in form reasonably satisfactory to the Administrative Agent and the Required Lenders, consisting of (i) Consolidated balance sheets and statements of income or operations and cash flows and (ii) monthly Availability for Borrowers for such fiscal year.

As to any information contained in materials furnished pursuant to Section 7.02(d), the Loan Parties shall not be separately required to furnish such information under clause (a), (b) or (c) above, but the foregoing shall not be in derogation of the obligation of the Loan Parties to furnish the information and materials described in subsections (a), (b) and (c) above at the times specified therein.

7.02 Borrowing Base Certificate; Other Information. Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) on or before the 20th of each month from and after the date hereof, Borrower Agent shall deliver to Administrative Agent, in form acceptable to the Administrative Agent, a Borrowing Base Certificate as of the last day of the immediately preceding month, with such supporting materials as the Administrative Agent shall reasonably request (including weekly reporting of rolling forward accounts receivable data by reporting weekly sales, cash collections and credits and monthly reporting of gross inventory, inventory ineligible and

accounts receivable ineligible). If a Reporting Trigger Period exists, Borrower Agent shall execute and deliver to Administrative Agent Borrowing Base Certificates weekly on or before Wednesday of each week and as of the last day of the immediately preceding week together with such supporting materials as the Administrative Agent shall reasonably request; provided that, to the extent approved by the Administrative Agent in its reasonable discretion, the Borrower will not be required to update certain items in the weekly Borrowing Base Certificate to the extent that such items are not available on a weekly basis in the ordinary course of business using commercially reasonable efforts (it being agreed that the foregoing shall not prevent the Administrative Agent from implementing Availability Reserves to account for such items). All calculations of Availability in any Borrowing Base Certificate shall initially be made by Borrowers and certified by a Responsible Officer, provided that the Administrative Agent may from time to time review and adjust any such calculation in its Credit Judgement (a) to reflect its estimate of declines in value of any Collateral, including due to collections received in the Concentration Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral, including delay of payment of accounts payable beyond past practice; and (c) to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Availability Reserve;

(b) on or before the 20th day of each calendar month from and after the date hereof, Borrower Agent shall deliver to the Administrative Agent, in the form reasonably acceptable to the Administrative Agent, (i) reconciliations of all Borrowers' Accounts as shown on the month-end Borrowing Base Certificate for the immediately preceding month to Borrowers' accounts receivable agings, to Borrowers' general ledger and to Borrowers' most recent financial statements, (ii) accounts payable agings, (iii) accounts receivable agings and invoice level agings, (iv) reconciliations of Borrowers' Inventory as shown on Borrowers' perpetual inventory, to Borrowers' general ledger and to Borrowers' financial statements and (vi) Inventory status reports, all with supporting materials as the Administrative Agent shall reasonably request.

(c) a Compliance Certificate executed by the chief financial officer of Borrower Agent which certifies compliance with Section 8.12 and provides a reasonably detailed calculation of the Consolidated Fixed Charge Coverage Ratio, delivered (i) concurrently with the delivery of financial statements under Sections 7.01(a), 7.01(b) and 7.01(c) above, whether or not a Fixed Charge Trigger Period then exists, (ii) on the first day of any Fixed Charge Trigger Period (certifying compliance as of the last day of the Measurement Period most recently ended prior to the start of such Fixed Charge Trigger Period) and (iii) as requested by the Administrative Agent while a Default or Event of Default exists;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement sent to the stockholders of Holdings, and copies of all annual, regular, periodic and special reports and registration statements which Holdings may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) at the Administrative Agent's request (but not more frequently than monthly unless a Default or Event of Default has occurred and is continuing), a listing of each Borrower's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form and scope satisfactory to the Administrative Agent;

(f) promptly following any request therefor, provide information and documentation reasonably requested by Administrative Agent for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable Anti-Money Laundering Laws, Anti-Corruption Laws, or Sanctions; and

(g) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request or as may be provided to the Term Loan Agent from time to time, all in form and scope reasonably acceptable to the Administrative Agent.

Documents required to be delivered pursuant to Section 7.01(a), 7.01(b) or 7.01(c) or Section 7.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower Agent posts such documents, or provides a link thereto on the Borrower Agent's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrower Agent's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (x) the Borrower Agent shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower Agent to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (y) the Borrower Agent shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Loan Party hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the Letter of Credit Issuer materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on SyndTrak or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Loan Parties or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Loan Party hereby agrees that, so long as any Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities, (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC", each Loan Party shall be deemed to have authorized the Administrative Agent, the Arrangers, the Letter of Credit Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to any Loan Party or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor". Notwithstanding the foregoing, the Borrowers shall be under no obligation to mark any Borrower Materials "PUBLIC."

7.03 Notices. Promptly, and in any event within one (1) Business Days after any Responsible Officer obtains knowledge of such occurrence or the materiality thereof, as applicable, notify the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

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(b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including as a result of (i) breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws; or (iv) any violation or asserted violation of any applicable Law;

(c) the occurrence of any ERISA Event;

(d) the occurrence of a Change of Control;

(e) the creation (by Division or otherwise) or acquisition of any Subsidiary;

(f) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary;

(g) any change in any Loan Party's senior executive officers;

(h) the discharge by any Loan Party of its present Auditors or any withdrawal or resignation by such Auditors;

(i) any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(j) the filing of any Lien for unpaid Taxes against any Loan Party;

(k) any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;

(l) any notice received by Holdings or any of its Subsidiaries under the Term Loan Documents or any notices of termination or event of default or any other material notice under the Master Retailer Agreement with Mattress Firm, Inc.;

(m) Collateral in an aggregate face amount of \$1,000,000 or more, at any one time, ceasing to be Eligible Accounts, Eligible Credit Card Receivables or Eligible Inventory;

(n) any material notice received with respect to any pledged Equity Interest;

(o) (i) any failure by any Loan Party to pay rent at any of such Loan Party's locations if such failure continues for more than fifteen (15) days following the day on which such rent first came due or (ii) any pending termination or expiration in accordance with its terms of a lease, bailment, storage or similar agreement for any location where a material amount of Collateral is located, at least 60 days prior to such termination or expiration, if no extension or renewal or replacement thereof has been entered into at such time; and

(p) the occurrence of any default under the Tax Receivable Agreement.

Each notice pursuant to this Section 7.03 shall be accompanied by a statement of a Responsible Officer of the Borrower Agent setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

7.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being Properly Contested; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, except to the extent that any such Lien would otherwise be permitted by Section 8.02; and (c) all Indebtedness having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

7.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 8.04 or 8.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered Intellectual Property, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

7.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

7.07 Maintenance of Insurance; Condemnation Proceeds.

(a) Maintain with (i) companies having an A.M. Best Rating of at least “A” or (ii) financially sound and reputable insurance companies reasonably acceptable to the Administrative Agent and not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Administrative Agent;

(b) Maintain flood insurance with respect to any Mortgaged Property located in any area identified by FEMA (or any successor agency) as a Special Flood Zone with such providers, on such terms and in such amounts as required pursuant to the Flood Disaster Protection Act and the National Flood Insurance Act of 1968, and all applicable rules and regulations promulgated thereunder, or as otherwise required by the Lenders.

(c) Cause all casualty policies, including fire and extended coverage policies, maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgagee clause (regarding improvements to Real Property) and lenders’ loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Administrative Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Administrative Agent, (ii) a provision to the effect that none of the Loan Parties, Secured Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Secured Parties.

(d) Cause commercial general liability policies to be endorsed to name the Administrative Agent as an additional insured; and cause business interruption policies to name the Administrative Agent as a loss payee and to be endorsed or amended to include (i) a provision to the effect that none of the Loan Parties, the Administrative Agent or any other party shall be a co-insurer and (ii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Secured Parties.

(e) Cause each such policy referred to in this Section 7.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days’ prior written notice thereof by the insurer, any Loan Party or any insurance broker of any Loan Party to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days’ prior written notice thereof by the insurer to the Administrative Agent.

(f) Deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy or insurance certificate (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium therefor.

(g) Permit any representatives that are designated by the Administrative Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby. The Loan Parties shall pay the reasonable fees and expenses of any representatives retained by the Administrative Agent to conduct any such inspection.

(h) None of the Secured Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 7.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Secured Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Secured Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Secured Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Secured Party under this Section 7.07 shall in no event be deemed a representation, warranty or advice by such Secured Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

7.08 Compliance with Laws; Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(a) Comply in all material respects with the requirements of all Laws (including without limitation all applicable Environmental Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i)

such requirement of Law or order, writ, injunction or decree is being Properly Contested; or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect;

(b) Notwithstanding the general applicability of Section 7.08(a) above, comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to Borrower and shall cause each other Loan Party and each of its and their respective Subsidiaries to comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to such Persons.

(c) Maintain in effect and enforce policies and procedures as in effect on the date hereof to ensure compliance by each Loan Party and all Controlled Persons with applicable Anti-Corruption Laws, Anti Money-Laundering Laws and Sanctions.

7.09 Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of each Loan Party or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over any Loan Party or such Subsidiary, as the case may be.

7.10 Inspection Rights and Appraisals; Meetings with the Administrative Agent.

(a) Permit the Administrative Agent or its designees or representatives from time to time, subject to reasonable notice and normal business hours (except, in each case, when a Default or Event of Default exists), to conduct Field Exams and/or appraisals of Inventory and to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers and Auditors; provided that representatives of the Borrower Agent shall be given the opportunity to participate in any discussions with the Auditors. The Administrative Agent shall not have any duty to any Loan Party to share any results of any Field Exam with any Loan Party. Appraisals shall be shared with the Borrower Agent upon request. The Loan Parties acknowledge that all Field Exams, appraisals and reports are prepared by or for the Administrative Agent and Lenders for their purposes, and Loan Parties shall not be entitled to rely upon them.

(b) Reimburse the Administrative Agent for all reasonable and documented out-of-pocket charges, costs and expenses of the Administrative Agent in connection with (i) up to one appraisal and one Field Exam during any twelve (12) month period during which no Field Exam Trigger Event has occurred and (ii) up to two appraisals and two Field Exams in any twelve (12) month period during which a Field Exam Trigger Event has occurred; provided, however, that if a Field Exam or appraisal is initiated during a Default or Event of Default, all charges, costs and expenses therefor shall be reimbursed by the Loan Parties without regard to such limits.

(c) Without limiting the foregoing, participate and will cause their key management personnel to participate in meetings with the Administrative Agent and Lenders periodically during each year, which meetings shall be held at such times and such places as may be reasonably requested by the Administrative Agent.

(d) Deliver to the Administrative Agent any appraisals or field exams that are delivered to the Term Loan Agent pursuant to the Term Loan Documents at the same time as such appraisals or field exams are delivered to the Term Loan Agent.

7.11 Use of Proceeds. Use the proceeds of the Credit Extensions (i) to refinance certain Indebtedness under the Existing Agreement, (ii) to finance Permitted Acquisitions; (iii) to pay fees and expenses in connection with the Transactions, and (iv) for working capital, capital expenditures, and other general corporate purposes not in contravention of any Law or of any Loan Document.

7.12 New Subsidiaries. As soon as practicable but in any event within 30 days following the acquisition or creation (by Division or otherwise) of any Domestic Subsidiary (other than an Excluded Subsidiary), or the time any existing Excluded Subsidiary ceases to be an Excluded Subsidiary, cause to be delivered to the Administrative Agent each of the following, as applicable:

(a) a joinder agreement reasonably acceptable to the Administrative Agent duly executed by such Domestic Subsidiary sufficient to cause such Subsidiary to become a Guarantor (or, with the consent of the Administrative Agent if such Subsidiary is to own any assets of the type included in the Borrowing Base, a Borrower hereunder), together with executed counterparts of each other Loan Document reasonably requested by the Administrative Agent, including all Security Instruments and other documents reasonably requested to establish and preserve the Lien of the Administrative Agent in all Collateral of such Domestic Subsidiary;

(b) (i) Uniform Commercial Code financing statements naming such Person as “Debtor” and naming the Administrative Agent for the benefit of the Secured Parties as “Secured Party,” in form, substance and number sufficient in the reasonable opinion of the Administrative Agent and its special counsel to be filed in all Uniform Commercial Code filing offices and in all jurisdictions in which filing is necessary to perfect in favor of the Administrative Agent for the benefit of the Secured Parties the Lien on the Collateral conferred under such Security Instrument to the extent such Lien may be perfected by Uniform Commercial Code filing, and (ii) pledge agreements, control agreements, Documents and original collateral (including pledged Equity Interests (other than Excluded Equity Interests), Securities and Instruments) and such other documents and agreements as may be reasonably required by the Administrative Agent, all as necessary to establish and maintain a valid, perfected security interest in all Collateral in which such Domestic Subsidiary has an interest consistent with the terms of the Loan Documents;

(c) upon the request of the Administrative Agent, an opinion of counsel to each such Domestic Subsidiary and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent, each of which opinions may be in form and substance, including assumptions and qualifications contained therein, substantially similar to those opinions of counsel delivered pursuant to Section 5.01(a);

(d) current copies of the Organization Documents of each such Domestic Subsidiary, together with minutes of duly called and conducted meetings (or duly effected consent actions) of the Board of Directors, partners, or appropriate committees thereof (and, if required by such Organization Documents or applicable law, of the shareholders, members or partners) of such Person authorizing the actions and the execution and delivery of documents described in this Section 7.12, all certified by the applicable Governmental Authority or appropriate officer as the Administrative Agent may elect; and

(e) with respect to any Subsidiary to become a Borrower hereunder, within three (3) Business Days prior to becoming a Borrower (which shall require the consent of the Administrative Agent), all information and documentation reasonably requested by (and results satisfactory to) Administrative Agent and each Lender for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws to the extent such information is requested by the Administrative Agent or the Lenders reasonably promptly after written notice to the Administrative Agent of the proposed joinder of a Borrower.

7.13 Compliance with ERISA. Do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance in all respects with the applicable provisions of ERISA, the Code and other applicable Laws, except as could not reasonably be expected to result in a Material Adverse Effect; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification, except as could not reasonably be expected to result in a Material Adverse Effect; and (c) make all required contributions to any Plan subject to the Pension Funding Rules. At no time shall the accumulated benefit obligations under any Plan subject to Title IV of ERISA that is not a Multiemployer Plan exceed the Fair Market Value of the assets of such Plan allocable to such benefits by more than the Threshold Amount. The Loan Parties and each of their respective Subsidiaries shall not withdraw, and shall cause each ERISA Affiliate not to withdraw, in whole or in part, from any Multiemployer Plan so as to give rise to withdrawal liability exceeding the Threshold Amount in the aggregate. At no time shall the actuarial present value of unfunded liabilities for post-employment health care benefits, whether or not provided under a Plan, calculated in a manner consistent with Statement No. 106 of the Financial Accounting Standards Board, exceed the Threshold Amount.

7.14 Further Assurances. At the Borrowers’ cost and expense, upon request of the Administrative Agent, duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further information, instruments,

documents, certificates, financing and continuation statements, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement, the Security Instruments and the other Loan Document, including, to create, continue or preserve the liens and security interests in Collateral (and the perfection and priority thereof) of the Administrative Agent contemplated hereby and by the other Loan Documents and specifically including all Collateral acquired by the Borrowers after the Closing Date.

7.15 Licenses. (a) Keep in full force and effect each License (i) the expiration or termination of which could reasonably be expected to materially adversely affect the realizable value in the use or sale of a material amount of Inventory or (ii) the expiration or termination of which could reasonably be expected to have a Material Adverse Effect (each a “Material License”); (b) promptly notify the Administrative Agent of (i) any material modification to any such Material License that could reasonably be expected to be materially adverse to any Loan Party or the Administrative Agent or any Lender and (ii) entering into any new Material License; (c) pay all Royalties (other than immaterial Royalties or Royalties being Properly Contested) arising under such Material Licenses when due (subject to any cure or grace period applicable thereto); and (d) notify the Administrative Agent of any default or breach asserted in writing by any Person to have occurred under any such Material License.

7.16 Environmental Laws. Conduct its operations and keep and maintain its Real Property in material compliance with all Environmental Laws, other than any such non-compliance which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; (b) obtain and renew all environmental permits necessary for its operations and properties, other than any environmental permits the failure of which to obtain would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; and (c) implement any and all investigation, remediation, removal and response actions that are required to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under or about any of its Real Property other than any such non-compliance which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

7.17 Leases, Mortgages and Third-Party Agreements.

(a) Upon request, provide Administrative Agent with copies of all existing and future agreements (including any mortgage, deed of trust or similar security document) entered into between a Loan Party and any landlord, warehouseman, manufacturer, processor, shipper, bailee or other Person that owns, or has a mortgage or similar lien on, any premises at which any Collateral with an aggregate value of \$100,000 or greater may be kept or that otherwise may possess any Collateral with an aggregate value of \$100,000 or greater (each a “Material Third-Party Agreement”).

(b) Except as otherwise expressly permitted hereunder, (i) make all payments and otherwise perform all obligations in respect of all leases constituting Material Third Party Agreements and not allow such leases to lapse or be terminated (or any rights to renew such leases to be forfeited or cancelled), (ii) notify the Administrative Agent of any default by the applicable Loan Party or Subsidiary with respect to such leases and (iii) promptly cure any such default by the applicable Loan Party or Subsidiary. If any such default is not so cured, each Loan Party hereby authorizes the Administrative Agent (as its non-fiduciary agent and on its behalf) to, if elected by the Administrative Agent in its sole discretion, make such payments and/or take such other actions as the Administrative Agent may elect in order to cure any such default (whether or not an Event of Default under this Agreement exists at such time). Any payment made pursuant to this Section 7.17(b) shall be deemed a Protective Advance hereunder. Each Loan Party agrees that the Administrative Agent shall have no obligation to exercise any right to cure hereunder, whether or not such right is exercised on any one or more occasions.

7.18 Material Contracts. Perform and observe all the payment terms and other material terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent and, upon reasonable request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do any of the foregoing, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

7.19 Treasury Management Services. Subject to the Post-Closing Agreement, each Loan Party shall maintain its primary lockbox deposit accounts exclusively with Bank of Montreal and shall utilize Bank of Montreal for its primary disbursement account and other Treasury Management and Other Services.

ARTICLE VIII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan Obligation (other than contingent obligations for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

8.01 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness or issue any Disqualified Equity Interest, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 8.01;

(c) Guarantees of any Loan Party in respect of Indebtedness otherwise permitted hereunder of any other Loan Party; provided that any Guarantee of Indebtedness permitted hereunder that is subordinated to the Obligations shall be subordinated to the Obligations on substantially the same terms as such guaranteed Indebtedness;

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(d) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the Ordinary Course of Business for the purpose of directly mitigating risks reasonably anticipated by such Person associated with liabilities, commitments, investments, assets, cash flows of or property held by, or changes in the value of securities issued by, such Person, and not for purposes of speculation or taking a “market view” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) Indebtedness arising in the Ordinary Course of Business in connection with treasury management and commercial credit card, merchant card and purchase or procurement card services including Treasury Management and Other Services;

(f) Indebtedness in respect of Capital Leases, Synthetic Lease Obligations and purchase money obligations for Real Property and other fixed or capital assets within the limitations set forth in Section 8.02(i); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding, together with the Swap Termination Value of all Swap Contracts permitted under Section 8.01(d) above, shall not exceed \$5,000,000;

(g) Assumed Indebtedness in an aggregate principal amount not to exceed \$1,000,000 at any time outstanding;

(h) Indebtedness (including earnouts and seller notes) incurred to finance or as part of the consideration for any Permitted Acquisition; provided, that, (i) no Event of Default exists at the time of or would be caused by the incurrence of such Indebtedness and (ii) such Indebtedness (A) is unsecured, (B) bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm’s length market rate (or amount) for similar Indebtedness, (C) does not have a maturity date or require the payment in cash of principal (other than in respect of working capital adjustments) prior to a date later than 91 days following the Maturity Date and (D) is subordinated to the Obligations on terms reasonably acceptable to the Administrative Agent;

(i) unsecured Indebtedness consisting of Investments in any Person that is not a Subsidiary permitted under Section 8.03; provided that any Guarantee of such unsecured Indebtedness shall be subordinated to the Obligations on substantially the same terms, if any, as are applicable to such unsecured Indebtedness;

(j) Indebtedness of Foreign Subsidiaries in an aggregate principal amount at any time outstanding not to exceed \$500,000;

(k) the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(l) Indebtedness in respect of any bankers' acceptance, bank guarantees, letters of credit, warehouse receipt or similar facilities entered into in the ordinary course of business in respect of workers' compensation and other casualty claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation and other casualty claims;

(m) Indebtedness incurred or arising in the Ordinary Course of Business and not in connection with the borrowing of money in respect of (i) obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms; (ii) performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar instruments or obligations; and (iii) obligations to pay insurance premiums;

(n) Indebtedness representing deferred compensation to current or former employees, directors, consultants or independent contractors incurred in the Ordinary Course of Business;

(o) surety bonds, deposits and similar obligations permitted under Section 8.02(e) or (f);

(p) unsecured Indebtedness of (A) any Loan Party owing to any other Loan Party or any Subsidiary that is not a Loan Party (so long as such Indebtedness owing to a Subsidiary that is not a Loan Party (1) bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (2) does not require the payment in cash of principal (at maturity or otherwise) prior to ninety-one (91) days following the Maturity Date, and (3) is subordinated to the Obligations on terms reasonably acceptable to the Administrative Agent and as to which at least ten (10) Business Days prior to incurrence thereof, the Borrower Agent has delivered a certificate to the Administrative Agent demonstrating compliance with each of clauses (1) through (3) above), (B) any Subsidiary that is not a Loan Party owing to any other Subsidiary that is not a Loan Party and (C) any Subsidiary that is not a Loan Party owing to any Loan Party; provided that any such Indebtedness described in this clause which is owing to a Loan Party, shall (1) be evidenced by promissory notes in form and substance satisfactory to the Administrative Agent and pledged to the Administrative Agent on terms acceptable to it, (2) be permitted under Section 8.03(c) or (i), and (3) not be forgiven or otherwise discharged for any consideration other than payment in full in cash unless the Administrative Agent otherwise consents;

(q) Term Loan Obligations in an aggregate outstanding principal amount not to exceed the "Maximum Term Loan Facility Amount" (as defined in the Intercreditor Agreement);

(r) other unsecured Indebtedness (i) that bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (ii) has a stated maturity date no earlier than 91 days following the Maturity Date, (iii) as to which at the time of incurrence thereof no Default or Event of Default has occurred and is continuing or would result therefrom, (iv) the aggregate outstanding principal amount of which does not exceed \$2,000,000 at any time, and (v) with respect to which at least ten (10) Business Days prior to each such incurrence, the Borrower Agent has delivered a certificate to the Administrative Agent demonstrating compliance with each of clauses (i) through (iv) above;

(s) Subordinated Debt; and

(t) Refinancing Indebtedness.

8.02 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following ("Permitted Liens"):

(a) Liens in favor of the Administrative Agent pursuant to any Loan Document;

(b) Liens existing on the date hereof as described on Schedule 8.02 (setting forth, as of the Closing Date, the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto) and any renewals or extensions thereof, provided that (i) the Lien does not extend to any additional property, and (ii) the obligations secured or benefited thereby constitutes Refinancing Indebtedness;

(c) Liens for taxes, assessments or other governmental charges, not yet due or which are being Properly Contested, and which in all cases are junior to the Lien of the Administrative Agent;

(d) Liens of carriers, warehousemen, mechanics, materialmen, repairmen, landlords or other like Liens imposed by Law or arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested;

(e) Liens, pledges or deposits in the Ordinary Course of Business in connection with (i) insurance, workers compensation, unemployment insurance and social security legislation, (ii) contracts, bids, government contracts, and surety, appeal, customs, performance and return-of-money bonds and (iii) other similar obligations (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to contracts, statutory requirements, common law or consensual arrangements, other than any Lien imposed by ERISA;

(f) Liens arising in the Ordinary Course of Business consisting of deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature, in each case, incurred in the Ordinary Course of Business;

(g) Liens with respect to minor imperfections of title and easements, rights-of-way, covenants, consents, reservations, encroachments, variations and zoning and other similar restrictions, charges, encumbrances or title defects affecting Real Property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person and do not materially detract from the value of or materially impair the use by the Loan Parties in the Ordinary Course of Business of the property subject to or to be subject to such encumbrance;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 9.01 or securing appeal or other surety bonds related to such judgments, and which in all cases are junior to the Lien of the Administrative Agent;

(i) Liens securing Indebtedness permitted under Section 8.01(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or Fair Market Value, whichever is lower, of the property being acquired on the date of acquisition;

(j) Liens securing Assumed Indebtedness of the Loan Parties or any Subsidiary permitted pursuant to Section 8.01(g); provided that (i) such Liens do not at any time encumber any property other than property of the Subsidiary acquired, or the property acquired, and proceeds thereof in connection with such Assumed Indebtedness and shall not attach to any assets of the Loan Parties theretofore existing or (except for any such proceeds) which arise after the date thereof and (ii) the Assumed Indebtedness and other secured Indebtedness of the Loan Parties secured by any such Lien does not exceed the Fair Market Value of the property being acquired in connection with such Assumed Indebtedness;

(k) Liens on assets of Foreign Subsidiaries of Holdings securing Indebtedness of such Foreign Subsidiaries permitted pursuant to Section 8.01(j);

(l) operating leases or subleases granted by the Loan Parties to any other Person in the Ordinary Course of Business;

(m) Liens (a) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (b) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and (c) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(n) Liens in favor of customs and revenue authorities imposed by Law to secure payment of customs duties in connection with the importation of goods and arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested; and

(o) Liens on assets securing Term Loan Obligations which Liens are subject to the Intercreditor Agreement.

8.03 Investments. Make or maintain any Investments, except:

(a) Investments held by the Loan Parties in the form of Cash Equivalents that are subject to the Administrative Agent's Lien and control, pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent;

(b) loans and advances to officers, directors and employees of the Loan Parties and Subsidiaries made in the Ordinary Course of Business in an aggregate amount at any one time outstanding not to exceed \$500,000;

(c) (i) Investments in Subsidiaries outstanding on the date hereof, (ii) Investments in wholly-owned Loan Parties (other than Holdings), (iii) Investments by Subsidiaries that are not Loan Parties in other Subsidiaries that are not Loan Parties, and (iv) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, Investments in Subsidiaries that are not Loan Parties in an aggregate amount in any fiscal year not to exceed \$100,000; provided that, the Borrower Agent shall have delivered a certificate to the Administrative Agent demonstrating compliance with this clause (iv) at least ten (10) Business Days prior to each such Investment;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 8.01;

(f) Investments existing as of the date hereof as described in Schedule 8.03 (setting forth, as of the Closing Date, the amount, obligor or issuer and maturity, if any, thereof) and extensions or renewals thereof, provided that no such extension or renewal shall be permitted if it would (i) increase the amount of such Investment at the time of such extension or renewal or (ii) result in a Default hereunder;

(g) Permitted Acquisitions;

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(h) Swap Agreements otherwise permitted hereunder constituting Investments; and

(i) other Investments not constituting Acquisitions so long as the Payment Conditions are satisfied with respect thereto.

Notwithstanding the terms of this Section 8.03 or Sections 8.04 or 8.05, in no event shall any Loan Party or any Subsidiary sell, lease, convey, assign, transfer or otherwise dispose of material Intellectual Property of the Loan Parties or any Subsidiary to any person who is, (a) in the case of a disposition by any Loan Party, not a Loan Party, or (b) in the case of a non-Loan Party, not Holdings or a Subsidiary, in each case of (a) and (b), other than non-exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles in the ordinary course of business.

8.04 Fundamental Changes. Merge, Divide, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary of Holdings may merge or consolidate with or liquidate or dissolve into a Loan Party; provided, that, (i) the Loan Party shall be the continuing or surviving Person, (ii) a Borrower may not merge into Holdings and (iii) in the case of any merger of a Borrower and a Subsidiary Guarantor, such Borrower shall be the continuing or surviving Person;

(b) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided, that, (i) the Person surviving such merger

shall be a wholly-owned Subsidiary of a Loan Party and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person; and

(c) any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party; provided that, when any wholly-owned Subsidiary is merging with another Subsidiary that is not wholly-owned, the wholly-owned Subsidiary shall be the continuing or surviving Person.

8.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of Inventory and, so long as no Event of Default exists or is created thereby, Cash Equivalents, each in the Ordinary Course of Business;

(b) Dispositions in the Ordinary Course of Business of Equipment or fixed assets that are obsolete, worn out or no longer useful to the Core Business for so long as (i) no Event of Default has occurred and is continuing at the time of such Disposition, (ii) the sum of the NOLV of such equipment or fixed assets that are of the type included in the Term Facility Borrowing Base plus the fair market value of any such other equipment or fixed assets does not exceed \$1,000,000 in any twelve-month period and (iii) all proceeds thereof are applied to the extent required in accordance with Section 2.06(c);

(c) Dispositions that constitute (i) an Investments permitted under Section 8.03, (ii) a Lien permitted under Section 8.02, (iii) a merger, dissolution, consolidation or liquidation permitted under Section 8.04(a), or (iv) a Restricted Payment permitted under Section 8.06;

(d) Dispositions that result from a casualty or condemnation in respect of such property or assets and is not otherwise an Event of Default so long as all proceeds thereof are applied in accordance with Section 2.06(c);

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(e) (x) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other Intellectual Property rights and (y) the licensing, on an exclusive basis, of patents, trademarks, copyrights, and other Intellectual Property rights (as long as such patents, trademarks, copyrights, and other Intellectual Property rights are not Borrowing Base Assets) in the Ordinary Course of Business in jurisdictions which Loan Parties are not operating or to the extent Loan Parties do not use such Intellectual Property;

(f) (i) the lapse of immaterial registered patents, trademarks, copyrights and other Intellectual Property to the extent maintaining such registered Intellectual Property is not economically desirable in the conduct of its business or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights in the Ordinary Course of Business so long as in each case under clauses (i) and (ii), such lapse or abandonment is not materially adverse to the interests of the Secured Parties;

(g) the leasing or subleasing of assets (other than sale and leaseback transactions prohibited under Section 8.15) in the Ordinary Course of Business;

(h) Dispositions that consist of the sale or discount in the Ordinary Course of Business of overdue accounts receivable that are not Eligible Accounts in connection with the compromise or collection thereof, provided that the Net Cash Proceeds from such Disposition shall be deposited in the Concentration Account;

(i) Dispositions among the Loan Parties or by any Subsidiary to a Loan Party;

(j) Dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party; and

(k) other Dispositions of assets other than Borrowing Base Assets so long as (i) no Event of Default has occurred and is continuing at the time of such Disposition and (ii) the Fair Market Value of all such assets Disposed of, whether individually or in a series of related transactions, does not exceed \$500,000 in the aggregate in any fiscal year.

8.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, in each case (except Section 8.06(a)) so long as no Default or Event of Default shall have occurred and be continuing (both before or as a result of the making of such Restricted Payment):

(a) each Subsidiary may make Restricted Payments, directly or indirectly, to any Borrower;

(b) Holdings and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) Holdings, the Borrowers and each Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other common Equity Interests or warrants or options to acquire any such shares in connection with customary employee or management agreements, plans or arrangements, all in an aggregate amount not to exceed \$1,000,000 during the term of this Agreement;

(d) [Reserved;]

(e) Restricted Payments by Borrowers to the extent necessary to permit Holdings to pay administrative costs and expenses related to the business of Borrowers and their Subsidiaries, so long as Holdings applies the amount of such Restricted Payment for such purpose;

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(f) the Company may make Permitted Tax Distributions; and

(g) Holdings shall be permitted to make other cash Restricted Payments so long as the Payment Conditions are satisfied with respect thereto.

8.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrowers and their Subsidiaries on the date hereof or any business substantially related or incidental thereto.

8.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of any Loan Party, whether or not in the Ordinary Course of Business, other than

(a) transactions on fair and reasonable terms substantially as favorable to such Loan Party or Subsidiary as would be obtainable by such Loan Party or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate;

(b) payment of reasonable and customary compensation and benefits (including equity awards) payable or provided to officers, directors, employees and independent contractors;

(c) transactions between or among the Loan Parties;

(d) Restricted Payments permitted under Section 8.06;

(e) Investments permitted under Section 8.03 and Fundamental Changes permitted under Section 8.04; and

(f) transactions pursuant to agreements in existence or contemplated on the Closing Date as set forth on Schedule 8.08 or any amendment thereto to the extent such an amendment is not adverse to the Secured Parties in any material respect.

8.09 Burdensome Agreements. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document or the Term Loan Documents) that:

(a) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; or

(b) limits the ability (i) of any Subsidiary to make Restricted Payments to Holdings or any Borrower or to otherwise transfer property to Holdings or any Borrower, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrowers or become a direct Borrower hereunder, or (iii) of any Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided,

however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 8.01(f) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness.

8.10 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, including through or by any Controlled Person, and whether immediately, incidentally or ultimately, (a) in any manner that might cause the Credit Extension or the application of such proceeds to violate Regulations T, U or X of the Board of Governors of the Federal Reserve System, in each case as in effect on the date or dates of such Credit Extension, or (b) (i) 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, (ii) to fund, finance or facilitate any activities, business or transaction of or with any Sanctioned Person or in any Designated Jurisdiction, or (iii) in any other manner that would result in the violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws applicable to any party hereto.

8.11 Prepayment of Indebtedness; Amendment to Material Contracts.

(a) Make or pay, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal, interest, fees or other amounts due on any Indebtedness (other than the Obligations), 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 Indebtedness (other than the Obligations), except for the following to the extent permitted by applicable Subordination Provisions:

(i) payments when due of regularly scheduled interest and principal payments (including mandatory prepayments arising as a result of a change of control or sale of substantially all assets);

(ii) payments made through the incurrence of Refinancing Indebtedness with respect to such Indebtedness;

(iii) payments of secured Indebtedness permitted hereunder that become due as a result of a voluntary Disposition permitted hereunder of the property securing such Indebtedness;

(iv) payments made solely from and substantially contemporaneously with the proceeds of the issuance of Equity Interests by Holdings (other than Disqualified Equity Interests);

(v) optional payments or prepayments in respect of any Indebtedness, provided, that, as of the date of any such payment or prepayment and after giving effect thereto, the Payment Conditions are satisfied; and

(vi) payments of the Term Loan Obligations from the proceeds of the Term Priority Collateral (as defined in the Intercreditor Agreement) to the extent not prohibited under the Intercreditor Agreement.

(b) Amend, modify or change in any manner any term or condition of (i) any Material Contract, (ii) the Tax Receivable Agreement or (iii) any Indebtedness permitted under Section 8.01(b), (d), (f), (g), (h) or (r), in each case, so that the terms and conditions thereof are less favorable in any material respect to the Administrative Agent or the Lenders.

8.12 Financial Covenants.

(a) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, determined on a Pro Forma Basis as of (i) the last day of the Measurement Period most recently ended before the commencement of a Fixed Charge Trigger Period and (ii) the last day of each Measurement Period thereafter ending during any Fixed Charge Trigger Period to be less than 1.00 to 1.00 for such Measurement Period.

(b) Minimum Availability. At all times while any Term Loan Obligations or any Refinancing Indebtedness related thereto and secured by a Lien on Term Priority Collateral are outstanding, permit Availability to be less than the greater of (i) 15.0% of the sum of (x) the Maximum Borrowing Amount (calculated without giving effect to the Term Loan Push Down Reserve) plus (y) the Term Facility Borrowing Base, and (ii) 11,000,000 at any time.

8.13 Creation of New Subsidiaries. Create or acquire any new Subsidiary after the Closing Date other than Subsidiaries created or acquired in accordance with Section 7.12.

8.14 Securities of Subsidiaries. Permit any Subsidiary to issue any Equity Interests (whether for value or otherwise) to any Person other than a Loan Party.

8.15 Sale and Leaseback. Enter into any agreement or arrangement with any other Person providing for the leasing by any Loan Party or any Subsidiary of real or personal property which has been or is to be sold or transferred by any Loan Party or any Subsidiary to such other Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of a Loan Party or any Subsidiary.

8.16 Organization Documents; Fiscal Year. (a) Amend, modify or otherwise change any of its Organization Documents in any case in any manner that could have a material adverse effect on the interests of the Secured Parties, or (b) change its fiscal year, except with the consent of the Administrative Agent.

8.17 Holdings Covenant. Cause Holdings not to engage in any business activities, hold any assets or incur any Indebtedness other than (i) acting as a holding company and transactions incidental thereto, including maintaining policies of insurance with respect to directors and officers liability and other insurable risks customary for similarly situated companies, (ii) entering into the Loan Documents and the transactions required herein or permitted herein to be performed by Holdings, (iii) entering into the agreements related to and consummating the Transactions, (iv) receiving and distributing the dividends, distributions and payments permitted to be made to Holdings pursuant to Section 8.06, (v) entering into engagement letters and similar type contracts and agreements with attorneys, accountants and other professionals, (vi) owning the Equity Interests of the Company, (vii) issuing Equity Interests as permitted hereunder, (viii) engaging in activities necessary or incidental to the director, officer and/or employee option incentive plan at Holdings, (ix) providing guarantees for the benefit of a Borrower to the extent such Person is otherwise permitted to enter into the transaction under this Agreement (including guaranties of lease obligations) and (x) holding nominal deposits in deposit accounts in connection with consummating any of the foregoing transactions. Holdings shall preserve, renew and keep in full force and effect its existence (and perform ministerial activities and make payments of taxes and administrative fees, in each case, to maintain its existence). Holdings shall not merge or consolidate with or into any other Person.

8.18 Tax Receivable Agreement. Terminate, or agree to the termination of, the Tax Receivable Agreement.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

9.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any Letter of Credit Obligation, or (ii) within three days after the same becomes due, any interest on any Loan or on any Letter of Credit Obligation, or any commitment or other fee due hereunder, or (iii) within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained (i) in any of Sections 7.01(a), 7.01(b), 7.01(c), 7.02(a) to the extent a Reporting Trigger Period exists, 7.03, 7.05, 7.07, 7.10, 7.11, or 7.19, Article VIII or the Post-Closing Agreement, or (ii) in any of Sections 4.04, 7.02(a) to the extent a Reporting Trigger Period does not exist, 7.02(b), 7.02(c), 7.02(e) or 7.02(f) and such failure continues for three (3) or more Business Days; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the

earlier of (i) receipt of notice of such default by a Responsible Officer of the Borrower Agent from the Administrative Agent, or (ii) any Responsible Officer of any Loan Party becomes aware of such default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party or its Subsidiaries herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made in any material respect; or

(e) Cross-Default. (i) With respect to (x) the Term Loan Obligations or (y) any other Indebtedness or guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, any Loan Party or its Subsidiaries (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, and after passage of any grace period) in respect of any such Indebtedness or guarantee, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, and such default continues for more than the grace or cure period, if any, therein specified, the effect of which default or other event is to cause, or to permit the holder of such Indebtedness or beneficiary of such guarantee (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Loan Party or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by a Loan Party or any Subsidiary as a result thereof is greater than Threshold Amount; or

(f) Insolvency Events. Any Insolvency Event shall occur with respect to any Loan Party; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party and is not released, vacated or fully bonded within 30 days after its issue or levy; (iii) any Loan Party is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business; (iv) there is a cessation of any material part of any Loan Party's business for a material period of time; or (v) a material portion of the Collateral or property or assets of a Loan Party is taken or impaired through condemnation; or

(h) Judgments. There is entered against any Loan Party (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments or orders (including for injunctive relief) that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, such judgment or order remains unvacated and unpaid and either (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 45 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any Loan Document, or any Lien granted thereunder, at any time after its execution and delivery and for any reason, other than as expressly permitted hereunder or upon Payment in Full, ceases to be in full force and effect (except with respect to immaterial assets); or any Borrower or any other Person contests in any manner the validity or enforceability of any Loan Document or any Lien granted to the Administrative Agent pursuant to the Security Instruments; or any Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document;

or any party to the Intercreditor Agreement contests in any manner the validity or enforceability of the Intercreditor Agreement or denies that it has any liability or obligation thereunder or purports to revoke, terminate or rescind the Intercreditor Agreement; or

(k) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any contract to which it is party or fails to observe or perform any other agreement or condition relating to any such contract to which it is party or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such contract to terminate such contract, in each case which would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(l) Indictment. (i) Any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any material portion of Collateral, or (ii) any director or senior officer of any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, unless such director or senior officer promptly resigns or is removed or replaced or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any material portion of Collateral; or

(m) Subordinated Debt. (i) The Subordination Provisions shall fail to be enforceable by the Lenders (which have not effectively waived the benefits thereof) in accordance with the terms thereof; or (ii) the principal or interest on any Loan, any Letter of Credit Obligation or other Loan Obligations shall fail to constitute "designated senior debt" (or any other similar term) under any document, instrument or agreement evidencing such Subordinated Debt; or (iii) any Loan Party or any of its Subsidiaries shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, or (B) that any of such Subordination Provisions exist for the benefit of any Secured Party; or (iv) any Loan Party or any Subsidiary thereof or any other Person fails to observe or perform any of the Subordination Provisions; or

(n) Uninsured Loss. A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds the Threshold Amount; or

(o) Change of Control. There occurs any Change of Control.

9.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may, and at the direction of the Required Lenders shall, take any or all of the following actions:

(a) (i) terminate, reduce or condition the commitment of each Lender to make Loans or any obligation of the Letter of Credit Issuer to make Letter of Credit Extensions or (ii) adjust or modify the Borrowing Base or the calculation thereof in any respect;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Loan Obligations owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that the Borrowers Cash Collateralize the Letter of Credit Obligations (in an amount equal to the then Outstanding Amount thereof) or any other Loan Obligations that are contingent or not yet due and payable in amount determined by the Administrative Agent in accordance with this Agreement; and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided, however, that upon the occurrence of an Event of Default under Section 9.01(f), the obligation of each Lender to make Loans and any obligation of the Letter of Credit Issuer to make Letter of Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the Letter of Credit Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

Any Event of Default occurring hereunder shall be deemed to exist and be continuing until waived by the Administrative Agent and all or any required portion of the Lenders in accordance with Section 11.01, notwithstanding any actual or purported remedy or cure of the actions, facts, circumstances or conditions giving rise to such Event of Default.

9.03 Application of Funds.

(a) Subject to Section 9.03(b) below, all payments made by Loan Parties in respect of the Loan Obligations shall be applied (a) first, as specifically required in the Loan Documents; (b) second, to Loan Obligations then due and owing; (c) third, to other Loan Obligations specified by Borrower Agent; and (d) fourth, as determined by Agent in its discretion.

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(b) Notwithstanding any provision to the contrary contained herein, after the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable and the Letter of Credit Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 9.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.16 and 2.17, be applied by the Administrative Agent in the following order:

First, to all fees, indemnities, expenses and other amounts (including reasonable fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article IV) due to the Administrative Agent in its capacity as such, until paid in full;

Second, to all Protective Advances and unreimbursed Overadvances payable to the Administrative Agent until paid in full;

Third, to all amounts owing to the Swing Line Lender for outstanding Swing Line Loans until paid in full;

Fourth, to that portion of the Loan Obligations constituting fees, indemnities and other amounts (other than principal, interest, Letter of Credit Fees and other Obligations expressly described in clauses Fifth through Eighth below) payable to the Lenders and the Letter of Credit Issuer (including reasonable fees, charges and disbursements of counsel to the respective Lenders and the Letter of Credit Issuer and amounts payable under Article III, all to the extent required to be paid by the Loan Parties under the Loan Documents), ratably among them in proportion to the respective amounts described in this clause Fourth payable to them until paid in full;

Fifth, to that portion of the Loan Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, Letter of Credit Borrowings and other Loan Obligations, ratably among the Lenders and the Letter of Credit Issuer in proportion to the respective amounts described in this clause Fifth payable to them until paid in full;

Sixth, to (i) that portion of the Obligations constituting unpaid principal of the Loans and Letter of Credit Borrowings and to Cash Collateralize that portion of Letter of Credit Obligations comprising the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers and (ii) the payment of Priority Swap Obligations to the extent a Credit Product Reserve has been established therefor, ratably among the Lenders, Letter of Credit Issuer and the applicable Credit Product Providers in proportion to the respective amounts described in this clause Sixth payable to them until paid in full;

Seventh, to payment of Conforming Credit Product Obligations (other than Priority Swap Obligations to the extent paid under clause Sixth above) ratably to the Credit Product Providers in proportion to the respective amounts described in this clause Seventh payable to them until paid in full;

Eighth, to all other Obligations (including Credit Product Obligations to the extent not paid under clauses Sixth or Seventh above) that are due and payable to the Administrative Agent and the other Secured Parties, or any of them, on such date, ratably based on the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date until paid in full; and

Last, the balance, if any, after Payment in Full, to the Borrowers or as otherwise required by Law.

(c) Subject to Sections 2.03(c) and 2.17, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. Amounts distributed with respect to any Credit Product Obligations shall be the lesser of (i) the maximum Credit Product Obligations last reported to the Administrative Agent or (ii) the actual Credit Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Credit Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Credit Product Provider. The allocations set forth in this Section are solely to determine the rights and priorities of Administrative Agent and Secured Parties as among themselves, and may be changed by agreement among them without the consent of any Borrower. This Section is not for the benefit of or enforceable by any Loan Party.

(d) For purposes of Section 9.03(b), “paid in full” of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Event, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any proceeding under Debtor Relief Laws.

(e) Administrative Agent shall not be liable for any application of amounts made by it in good faith under this Section 9.03, notwithstanding the fact that any such application is subsequently determined to have been made in error except as a direct and sole result of the gross negligence or willful misconduct of the Administrative Agent.

ARTICLE X ADMINISTRATIVE AGENT

10.01 Appointment and Authority. Each of the Lenders and the Letter of Credit Issuer hereby irrevocably appoints BMO to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and BMO hereby accepts such appointment. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Letter of Credit Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. The Administrative Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts, Eligible Credit Card Receivables or Eligible Inventory, or whether to impose or release any Reserve, or whether any conditions to funding any Loan or to issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Administrative Agent from liability to any Lender or other Person for any error in judgment or mistake.

10.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

10.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by 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), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable to any other Secured Party for any action taken or not taken by it under or in connection with the Loan Documents, except for direct (as opposed to consequential) losses directly and solely caused by the Administrative Agent's gross negligence or willful misconduct. The Administrative Agent shall not be liable for any action taken or not taken by it 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 the Administrative Agent shall believe in good faith shall be necessary, under the Loan Documents). The Administrative Agent shall not be liable for, and shall be fully justified in, failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the Loan Documents) as it reasonably deems appropriate. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower Agent, a Lender or the Letter of Credit Issuer.

The Administrative Agent shall not be responsible for or have any duty 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 thereunder 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 therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's, the Letter of Credit Issuer's or the Swing Line Lender's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means) or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.04 Reliance by the Administrative Agent. The 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, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. 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 the Letter of Credit Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Letter of Credit Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the Letter of Credit Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts 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.

10.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or 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 Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

10.06 Resignation of the Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the Letter of Credit Issuer and the Borrower Agent. Upon receipt of any such notice of resignation, the Required

Lenders shall have the right, in consultation with the Borrower Agent, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the Letter of Credit Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower Agent and the 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 held by the Administrative Agent on behalf of the Lenders or the Letter of Credit Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral 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 the Administrative Agent shall instead be made by or to each Lender and the Letter of Credit Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as the Administrative Agent.

Any resignation by BMO as the Administrative Agent pursuant to this Section shall also constitute its resignation as Letter of Credit Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Letter of Credit Issuer and Swing Line Lender, (b) the retiring Letter of Credit Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Letter of Credit Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Letter of Credit Issuer to effectively assume the obligations of the retiring Letter of Credit Issuer with respect to such Letters of Credit.

10.07 Non-Reliance on the Administrative Agent and Other Lenders. Each Lender and the Letter of Credit Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Letter of Credit Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

10.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agents or Documentation Agents listed on the cover page hereof shall have any rights, powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Letter of Credit Issuer hereunder.

10.09 The Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, 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, Letter of Credit 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 the Lenders, the Letter of Credit Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Letter of Credit Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Letter of Credit Issuer and the Administrative Agent under Sections 2.03(h), 2.09 and 11.04) 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 Lender and the Letter of Credit Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Letter of Credit Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the Letter of Credit Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the Letter of Credit Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the Letter of Credit Issuer in any such proceeding.

The Loan Parties and the Secured Parties hereby irrevocably authorize the Administrative Agent, based upon the instruction of the Required Lenders, to (a) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Section 363 of the Bankruptcy Code of the United States or any similar Laws in any other jurisdictions to which a Loan Party is subject, or (b) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of the Administrative Agent to credit bid and purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Secured Parties whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase). Upon request by the Administrative Agent or the Borrower Agent at any time, the Secured Parties will confirm in writing the Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 10.09.

10.10 Collateral Matters. The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any Collateral (i) upon the occurrence of the Facility Termination Date, (ii) that is Disposed or to be Disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 11.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to release or subordinate any Lien (and any Indebtedness secured thereby) on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property (i) that is permitted by Section 8.02(i), so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release or subordination, as the case may be, a certificate of a Responsible Officer certifying that such Lien (and the Indebtedness secured thereby) is permitted by Section 8.02(i) (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), or (ii) if such release or subordination is required under the Intercreditor Agreement; and

(c) to release any Subsidiary from its obligations under the Loan Documents, and release any Lien granted by such Subsidiary thereunder, if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder, so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release a certificate of a Responsible Officer certifying that such

transaction is permitted by this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents pursuant to this Section 10.10.

10.11 Other Collateral Matters.

(a) Care of Collateral. The Administrative Agent shall have no obligation to assure that any Collateral exists or is owned by a Borrower, or is cared for, protected or insured, nor to assure that the 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.

(b) Lenders as Agent For Perfection by Possession or Control. The Administrative Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request, deliver such Collateral to the Administrative Agent or otherwise deal with it in accordance with the Administrative Agent's instructions.

(c) Reports. The Administrative Agent shall promptly forward to each Lender, when complete, copies of any Field Exam or appraisal report prepared by or for the Administrative Agent with respect to any Borrower or Collateral ("Report"). Each Lender agrees (a) that neither BMO nor the 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; (b) that the Reports are not intended to be comprehensive audits or examinations, and that the Administrative Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon Borrowers' books and records as well as upon representations of Borrowers' officers and employees; and (c) to keep all Reports confidential and strictly for such Lender's internal use, and not to distribute any Report (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender shall indemnify and hold harmless the Administrative Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any claims arising as a direct or indirect result of the Administrative Agent furnishing a Report to such Lender.

10.12 Credit Product Arrangement Provisions.

(a) No Credit Product Provider that is party to any Credit Product Arrangement permitted hereunder that obtains the benefits of Section 9.03 or any Collateral by virtue of the provisions hereof or of any Security Instrument shall have (i) any right to notice of any action, (ii) any right to consent to, direct or object to any action or inaction hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release, subordination or impairment of any Lien on Collateral), or (iii) any right to require or receive any financial information or Borrowing Base Certificates or reports or similar certificates or information under the Loan Documents, other than in its capacity as a Lender, if applicable, and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of Section 9.03 or this Article X to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Credit Product Obligations unless the Administrative Agent has received written notice of such Credit Product Obligations, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Credit Product Provider. The Lenders irrevocably authorize the Administrative Agent to secure all Credit Product Obligations with the Collateral to the same extent as other Obligations, all to the extent contemplated hereunder as determined by the Administrative Agent in its Credit Judgment.

(b) By delivery of a Credit Product Notice, each Credit Product Provider that is not a Lender (a “Non-Lender Credit Product Provider”) shall be deemed to have joined this Agreement and be bound by Section 9.03, this Article X and Section 11.04(c) as if it were a Lender hereunder holding a “Loan” in the amount of its applicable Credit Product Obligations. No Non-Lender Credit Product Provider shall have any right or claim against any Loan Party under the Loan Documents other than as a Secured Party under the Security Instruments, nor shall any of them be a third party beneficiary of any provisions of this Agreement by which the Loan Parties are bound other than provisions relating to the granting of the Lien of the Administrative Agent on the Collateral and the application of proceeds thereof pursuant to Section 9.03.

10.13 ERISA Related Provisions.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, 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, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan 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 the Loans, the Letters of Credit or the Commitments,

(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 of the Loans, the Letters of Credit, the Commitments and this Agreement,

(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 the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best 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 the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), 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, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Administrative Agent or the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent or the Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Administrative Agent and the Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

10.14 Recovery of Erroneous Payments. Notwithstanding anything to the contrary in this Agreement, if at any time the Administrative Agent determines (in its sole and absolute discretion) that it has made a payment hereunder in error to any Lender, the Letter of Credit Issuer or any other Secured Party, whether or not in respect of an Obligation due and owing by any Loan Party at such time, where such payment is a Rescindable Amount, then in any such event, each such Person receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Person in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender, the Letter of Credit Issuer and each other Secured Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another), "good consideration", "change of position" or similar defenses (whether at law or in equity) to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender, the Letter of Credit Issuer and each other Secured Party that received a Rescindable Amount promptly upon determining that any payment made to such Person comprised, in whole or in part, a Rescindable Amount. Each Person's obligations, agreements and waivers under this Section 10.14 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or the Letter of Credit Issuer, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE XI MISCELLANEOUS

11.01 Amendments, Etc. Subject to Section 3.03(b) above,

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower Agent or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender;

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (but excluding the delay or waiver of any mandatory prepayment) of principal, interest, fees or other amounts due to the Lenders (or any of them), including the Maturity Date, or any scheduled reduction of the Commitments hereunder or under any other Loan Document, in each case without the written consent of each Lender directly affected thereby;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or Letter of Credit Borrowing, or reduce any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of “Default Rate” (so long as such amendment does not result in the Default Rate being lower than the interest rate then applicable to Base Rate Loans or SOFR Loans, as applicable) or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein);

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(iv) change (i) Section 2.13 in a manner that would alter the pro rata sharing of payments required thereby or (ii) Section 9.03, in each case without the written consent of each Lender directly affected thereby;

(v) change any provision of this Section or the definition of “Required Lenders” or “Required Supermajority Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(vi) except as provided in Section 2.18, increase the Aggregate Revolving Credit Commitments without the written Consent of each Revolving Credit Lender;

(vii) release any material Borrower from this Agreement or any material Security Instrument to which it is a party without the written consent of each Lender, except to the extent such Borrower is the subject of a Disposition permitted by Section 8.05 (in which case such release may be made by the Administrative Agent acting alone);

(viii) release, or subordinate the Administrative Agent’s Lien on, all or substantially all of the Collateral without the written consent of each Lender; or

(ix) without the prior written consent of the Required Supermajority Lenders, amend the definition of “Borrowing Base” or any defined term used therein in a manner that would increase availability; provided, that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves or to determine eligibility of Accounts or Inventory or other assets of the type available to be included in the Borrowing Base in accordance with such terms; or

(x) without the prior written consent of each Lender, impose any materially greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder.

(b) In addition to the foregoing, (i) no amendment, waiver or consent shall, unless in writing and signed by the Letter of Credit Issuer in addition to the Lenders required above, affect the rights or duties of the Letter of Credit Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the respective parties thereto; and (v) the Administrative Agent and the Borrower Agent shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower Agent shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any such provision. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all

Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Credit Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(c) Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (i) to add one or more additional revolving credit facilities (each a “Supplemental Facility”) to this Agreement, in each case subject to the limitations in Section 2.18, and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by the Administrative Agent and approved by the Required Lenders, the Lenders providing such Supplemental Facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

(d) If any Lender does not consent (a “Non-Consenting Lender”) to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace such Non-Consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

(e) No Loan 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 or its Affiliates as consideration for agreement by such Lender to any amendment, waiver, consent or release with respect to any Loan Document, unless such remuneration or value is concurrently paid, on the same terms, on a ratable basis to all Lenders providing their agreement. Notwithstanding the terms of this Agreement or any amendment, waiver, consent or release with respect to any Loan Document, Non-Consenting Lenders shall not be entitled to receive any fees or other compensation paid to the Lenders in connection with any amendment, waiver, consent or release approved in accordance with the terms of this Agreement by the Required Lenders.

(f) IN NO EVENT SHALL THE REQUIRED LENDERS, WITHOUT THE PRIOR WRITTEN CONSENT OF EACH LENDER, DIRECT THE ADMINISTRATIVE AGENT TO ACCELERATE AND DEMAND PAYMENT OF THE LOANS HELD BY ONE LENDER WITHOUT ACCELERATING AND DEMANDING PAYMENT OF ALL OTHER LOANS OR TO TERMINATE THE COMMITMENTS OF ONE OR MORE LENDERS WITHOUT TERMINATING THE COMMITMENTS OF ALL LENDERS. EACH LENDER AGREES THAT, EXCEPT AS OTHERWISE PROVIDED IN ANY OF THE LOAN DOCUMENTS AND WITHOUT THE PRIOR WRITTEN CONSENT OF THE REQUIRED LENDERS, IT WILL NOT TAKE ANY LEGAL ACTION OR INSTITUTE ANY ACTION OR PROCEEDING AGAINST ANY LOAN PARTY WITH RESPECT TO ANY OF THE OBLIGATIONS OR COLLATERAL, OR ACCELERATE OR OTHERWISE ENFORCE ITS PORTION OF THE OBLIGATIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO LENDER MAY EXERCISE ANY RIGHT THAT IT MIGHT OTHERWISE HAVE UNDER APPLICABLE LAW TO CREDIT BID AT FORECLOSURE SALES, UNIFORM COMMERCIAL CODE SALES OR OTHER SIMILAR SALES OR DISPOSITIONS OF ANY OF THE COLLATERAL EXCEPT AS AUTHORIZED BY THE REQUIRED LENDERS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION OR ELSEWHERE HEREIN, EACH LENDER SHALL BE AUTHORIZED TO TAKE SUCH ACTION TO PRESERVE OR ENFORCE ITS RIGHTS AGAINST ANY LOAN PARTY WHERE A DEADLINE OR LIMITATION PERIOD IS OTHERWISE APPLICABLE AND WOULD, ABSENT THE TAKING OF SPECIFIED ACTION, BAR THE ENFORCEMENT OF OBLIGATIONS HELD BY SUCH LENDER AGAINST SUCH LOAN PARTY, INCLUDING THE FILING OF PROOFS OF CLAIM IN ANY INSOLVENCY PROCEEDING.

11.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or in the case of notices otherwise expressly provided herein (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to a Loan Party, the Administrative Agent, the Letter of Credit Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02, as changed pursuant to subsection (d) below; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire, as changed pursuant to subsection (d) below (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices 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 delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Letter of Credit Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Letter of Credit Issuer pursuant to Article II if such Lender or the Letter of Credit Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers 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.

Unless the 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), provided that 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, 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.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING 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 BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower, any Lender, the Letter of Credit Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of a Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Borrower, any Lender, the Letter of Credit Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower Agent, the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, Letter of Credit Issuer and Lenders. The Administrative Agent, the Letter of Credit Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Administrative Agent, the Letter of Credit Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies. No failure by any Lender, the Letter of Credit Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrowers or any other Loan Party or any of them (including enforcement action with respect to any Collateral) shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9.02 for the benefit of all the Secured Parties; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Letter of Credit Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as Letter of Credit Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.14), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Borrower under any Debtor Relief Law but only to the extent the Administrative Agent shall have failed to do so within a reasonable time after notice; and provided further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.14, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket expenses (including any Extraordinary Expenses) incurred by the Administrative Agent and its Affiliates, (A) in connection with this Agreement and the other Loan Documents, including without limitation (1) the reasonable fees, charges and disbursements of counsel for the Administrative Agent, (2) the reasonable fees, charges and disbursements of outside consultants for the Administrative Agent, (3) the reasonable fees, charges and disbursements of appraisers (subject to the limitations set forth in Section 7.10(b)), (4) Field Exams (subject to the limitations set forth in Section 7.10(b)), (5) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, and (6) environmental site assessments, (B) in connection with (1) the syndication of the credit facilities provided for herein, (2) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (3) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts

to preserve, protect, collect, or enforce the Collateral, or (4) any workout, restructuring or negotiations in respect of any Obligations, and (ii) with respect to the Letter of Credit Issuer, and its Affiliates, all reasonable out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable out-of-pocket expenses incurred by the Secured Parties who are not the Administrative Agent, the Arranger, the Letter of Credit Issuer or any Affiliate of any of them, after the occurrence and during the continuance of an Event of Default; provided, that, such Secured Parties shall be entitled to reimbursement for no more than one counsel representing all such Secured Parties (absent a conflict of interest in which case the Secured Parties may engage and be reimbursed for additional counsel with respect to such conflict) (the foregoing, collectively being referred to as “Secured Party Expenses”).

(b) Indemnification by the Borrowers. Each Loan Party shall indemnify the Administrative Agent (and any sub-agent thereof), each other Secured Party and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold harmless each Indemnatee from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any third party or by the Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 4.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Letter of Credit Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Secured Party to, a Controlled Account Bank or other Person which has entered into a control agreement with any Secured Party hereunder or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Loan Party, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee or any of its Related Parties.

(c) Indemnification of Administrative Agent by Lenders. To the extent that (i) the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, or (ii) any liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever are imposed on, incurred by, or asserted against, any Agent, the Letter of Credit Issuer or a Related Party (an “Agent Indemnatee”) in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by any Agent Indemnatee in connection therewith (collectively, “Agent Indemnatee Liabilities”), then each Lender severally agrees to pay to the Administrative Agent for the benefit of such Agent Indemnatee, such Lender’s Ratable Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such Agent Indemnatee Liabilities, so long as the Agent Indemnatee Liabilities were incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Letter of Credit Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Letter of Credit Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d). In no event shall any Lender have any obligation hereunder to indemnify or hold harmless an Agent Indemnatee with respect to any Agent Indemnatee Liabilities that are determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Agent Indemnatee. In the Administrative Agent’s discretion, it may reserve for any Agent Indemnatee Liabilities of an Agent Indemnatee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to the Secured Parties. If the Administrative Agent is sued by any creditor representative, debtor-in-possession or other Person for any alleged preference or fraudulent transfer, then any monies paid by the 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 promptly reimbursed to the Administrative Agent by each Lender to the extent of its Ratable Share thereof.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waives, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document

or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender, the replacement of any Lender and the occurrence of the Facility Termination Date.

11.05 Marshalling; Payments Set Aside. None of the Administrative Agent or Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or against any Obligations. To the extent that any payment by or on behalf of any Loan Party is made to a Secured Party, or a Secured Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Secured Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the Letter of Credit Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate, in the applicable currency of such recovery or payment. The obligations of the Loan Parties under clause (a) of this section and the Lenders and the Letter of Credit Issuer under clause (b) of this section shall survive the occurrence of the Facility Termination Date.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder (except in connection with the joinder of a Loan Party in accordance with Section 7.12) without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, 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 subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Secured Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(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 Commitment(s) and the Loans (including for purposes of this Section 11.06(b), participations in Letter of Credit Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts. Except in the case of (A) an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or (B) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject

to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower Agent otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) 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 Loans or the Commitment assigned, except that this clause shall not apply to the Swing Line Lender’s rights and obligations in respect of Swing Line Loans. No Lender shall assign all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment to an Eligible Assignee except to the extent required by subsection (b)(i)(B) of this Section; provided that the Borrower Agent shall be deemed to have given the consent required in the definition of “Eligible Assignee” to such assignment if Borrower Agent has not, on behalf of all Borrowers, responded in writing within ten (10) Business Days of a request for consent.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrowers or any of a Borrower’s Affiliates or Subsidiaries, (B) to 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 clause (B), or (C) to a natural person.

(vi) 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 the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the 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 the Administrative Agent or any 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 Applicable Percentage. 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 paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, 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 and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption 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 Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 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 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes) (in such capacity, subject to Section 11.18), shall maintain at the Administrative Agent’s Office a copy of

each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and Loan Obligations owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and the Borrowers, the 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, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower Agent and any Lender at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or a Borrower or any of the Borrowers’ Affiliates or Subsidiaries) (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 Revolving Credit Commitment and/or the Loans (including such Lender’s participations in Letter of Credit Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the Letter of Credit Issuer shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement.

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, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

If any Lender (or any assignee thereof) sells a participation, such Lender (or such assignee) shall, acting solely for this purpose as an agent of the 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 (nor any assignee thereof) 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 (or such assignee) shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower Agent’s prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower Agent is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 3.01(e) as though it were a Lender.

(f) 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 (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; 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.

(g) Resignation as Letter of Credit Issuer and/or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time BMO or any other Lender assigns all of its Revolving Credit Commitment, Revolving Credit Loans, pursuant to subsection (b) above, such Person may, (i) upon thirty (30) days' notice to the Borrower Agent and the Lenders, resign as Letter of Credit Issuer and/or (ii) upon thirty (30) days' notice to the Borrower Agent, resign as Swing Line Lender. In the event of any such resignation as Letter of Credit Issuer, or Swing Line Lender, the Borrower Agent shall be entitled to appoint from among the Lenders willing to serve in such capacity a successor Letter of Credit Issuer or Swing Line Lender hereunder, as the case may be; provided, however, that no failure by the Borrower Agent to appoint any such successor shall affect the resignation of such Person as Letter of Credit Issuer or Swing Line Lender, as the case may be. If BMO resigns as Letter of Credit Issuer, such Person shall retain all the rights, powers, privileges and duties of the Letter of Credit Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Letter of Credit Issuer and all Letter of Credit Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If BMO resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor Letter of Credit Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Letter of Credit Issuer or Swing Line Lender, as the case may be, and (b) the successor Letter of Credit Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such successor or make other arrangements satisfactory to the retiring Letter of Credit Issuer to effectively assume the obligations of such Letter of Credit Issuer with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality. Each of the Secured Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its branches and Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) 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, (f) subject to an agreement containing provisions substantially the same as (or no less restrictive than) those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any direct or indirect actual or prospective party (or its Related Parties) to any swap, derivative, securitization or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrowers or their Subsidiaries or any Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to any Facility; (h) with the consent of the Borrower Agent; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to a Secured Party or any of their respective branches or Affiliates on a nonconfidential basis from a source other than the Loan Parties that is not known to be subject to a confidentiality obligation with respect to such Information or (z) is independently discovered or developed by a party hereto without utilizing any Information received from a Loan Party or violating the terms of this Section; or to the extent required by a potential or actual insurer or reinsurer in connection with providing insurance, reinsurance or credit risk mitigation coverage under which payments are to be made or may be made by reference to this Agreement.

For purposes of this Section, “Information” means all information received from any Loan Party or any Subsidiary relating to a Loan Party or any Subsidiary or any of their respective businesses, other than any such information that is available to any Secured Party on a nonconfidential basis prior to disclosure by a Loan Party or any Subsidiary, provided that, in the case of information received from a Loan Party or any Subsidiary after the date hereof, any information not marked “PUBLIC” at the time of delivery will be deemed to be confidential; provided that any information marked “PUBLIC” may also be marked “Confidential”. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Secured Parties acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (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.

Each of the Loan Parties hereby authorizes the Administrative Agent to publish the name of any Loan Party and the amount of the credit facility provided hereunder in any “tombstone” or comparable advertisement which the Administrative Agent elects to publish. The Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Letter of Credit Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, only after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Letter of Credit Issuer or any such Affiliate to or for the credit or the account of the Borrowers against any and all of the obligations of the Borrowers now or hereafter existing under this Agreement or any other Loan Document to such Lender or the Letter of Credit Issuer, irrespective of whether or not such Lender or the Letter of Credit Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers may be contingent or unmatured or are owed to a branch or office of such Lender or the Letter of Credit Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender or any Affiliate thereof shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender or its Affiliate (as applicable) from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender or its Affiliate shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or its Affiliates as to which such right of setoff was exercised. The rights of each Lender, the Letter of Credit Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Letter of Credit Issuer or their respective Affiliates may have. Each Lender and the Letter of Credit Issuer agrees to notify the Borrower Agent and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum 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 Loan Obligations hereunder.

11.10 Integration; Effectiveness. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto.

11.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and

thereof. Such representations and warranties have been or will be relied upon by the Secured Parties, regardless of any investigation made by any Secured Party or on their behalf and notwithstanding that any Secured Party may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Loan Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Further, the provisions of Sections 3.01, 3.04, 3.05 and 11.04 and Article X shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Administrative Agent may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Secured Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, and (y) any obligations that may thereafter arise with respect to Credit Product Obligations.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the Letter of Credit Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender is a Defaulting Lender, or if any Lender fails to approve any amendment, waiver or consent requested by Borrower Agent pursuant to Section 11.01 that has received the written approval of not less than the Required Lenders but also requires the approval of such Lender, then in each such case the Borrower Agent may, at its sole expense and effort, upon notice to such Lender and the 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 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower Agent shall have paid to the Administrative Agent the assignment fee specified in Section 11.06(b);

(b) such Lender shall have received the following, as applicable:

(i) if such Lender is not a Defaulting Lender, both (A) payment of an amount equal to the outstanding principal of its Loans and Letter of Credit Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Agent (in the case of all other amounts) and (B) evidence that the obligations and liabilities of each Loan Party or their Affiliates under all Credit Product Arrangements shall have been fully, finally and irrevocably paid and satisfied in full and the Credit Product Arrangements shall have expired or been terminated, or other arrangements satisfactory to the counterparties shall have been made with respect thereto; or

(ii) if such Lender is a Defaulting Lender, payment of an amount equal to the outstanding principal of its Loans and Letter of Credit Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Agent (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) in the case of any such assignment resulting from the refusal of a Lender to approve a requested amendment, waiver or consent, the Person to whom such assignment is being made has agreed to approve such requested amendment, waiver or consent; and

(e) such assignment does not conflict with applicable Laws.

A 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 the Borrowers to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

(b) **EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF 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, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES 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 IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE LETTER OF CREDIT ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWERS OR THEIR PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(c) **EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THAT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS SECTION 11.14 ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.**

(d) **EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.**

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

11.16 Electronic Execution; Electronic Records; Counterparts. This Agreement, any Loan Document, any Assignment and Assumption and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. The words “execution,” “signed,” “signature,” and words of like import in the Loan Documents shall be deemed to include Electronic Signatures or the keeping of 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 Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar applicable state laws based on the Uniform Electronic Transactions Act. Each of the Loan Parties, the Administrative Agent and each Lender agrees that any Electronic Signature of such Person on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each Lender may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”) which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent nor any Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent, the Letter of Credit Issuer and/or Swing Line Lender has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Lender without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart.

Each of the Loan Parties and each Lender hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document or any Communication based solely on the lack of paper original copies of this Agreement, such other Loan Document or such Communication, and (ii) waives any claim against the Administrative Agent, each Lender and each of their Related Parties for any liabilities arising solely from the Administrative Agent’s and/or any Lender’s reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

For the avoidance of doubt, each use of the term “Lender” in this Section 11.16 shall include the Letter of Credit Issuer.

11.17 USA PATRIOT Act Notice. Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrowers in accordance with the PATRIOT Act.

11.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Secured Parties are arm’s-length commercial transactions between each Loan Party, on the one hand, and the Secured Parties, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Secured Party is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Affiliates or any other Person and (B)

no Secured Party has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iii) the Secured Parties may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and no Secured Party has any obligation to disclose any of such interests to any Loan Party or its Affiliates and (iv) the Secured Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against any Secured Party with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.19 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein; except, that, in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

11.20 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 an 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 Resolution Authority to any such liabilities arising hereunder which 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

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any Resolution Authority.

11.21 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Obligation 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 State of New York and/or of the United States or any other state of the United States):

(a) In the event 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.

(b) As used in this Section 11.21, the following terms have the following meanings:

“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.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“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.

“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).

ARTICLE XII CONTINUING GUARANTY

12.01 Guaranty. Holdings and each Subsidiary Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations (other than Excluded Swap Obligations), whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrowers to the Secured Parties, arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys’ fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof) (the “Guaranteed Obligations”). The Administrative Agent’s books and records showing the amount of the Guaranteed Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon Holdings and each Subsidiary Guarantor, and conclusive for the purpose of establishing the amount of the Guaranteed Obligations. This guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Guaranteed Obligations which might otherwise constitute a defense to the obligations of Holdings or any Subsidiary Guarantor under this guaranty, and Holdings and each Subsidiary Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

12.02 Rights of Lenders. Holdings and each Subsidiary Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guaranteed Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this guaranty or any Guaranteed Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the Letter of Credit Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guaranteed Obligations. Without limiting the generality of the foregoing, Holdings and each Subsidiary Guarantor consents to the taking of, or failure to

take, any action which might in any manner or to any extent vary the risks of Holdings or any Subsidiary Guarantor under this Agreement or which, but for this provision, might operate as a discharge of Holdings or any Subsidiary Guarantor.

12.03 Certain Waivers. Holdings and each Subsidiary Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrowers or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrowers; (b) any defense based on any claim that Holdings' or any Subsidiary Guarantor's obligations exceed or are more burdensome than those of the Borrowers; (c) the benefit of any statute of limitations affecting Holdings' or any Subsidiary Guarantor's liability hereunder; (d) any right to proceed against the Borrowers, proceed against or exhaust any security for the Guaranteed Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties (other than Payment In Full). Holdings and each Subsidiary Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations, and all notices of acceptance of this guaranty or of the existence, creation or incurrence of new or additional Guaranteed Obligations.

12.04 Obligations Independent. The obligations of Holdings and each Subsidiary Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guaranteed Obligations and the obligations of any other guarantor, and a separate action may be brought against Holdings and each Subsidiary Guarantor to enforce this guaranty whether or not any Borrower or any other person or entity is joined as a party.

12.05 Subrogation. Neither Holdings nor any Subsidiary Guarantor shall exercise and each of them hereby subordinates any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this guaranty until the Facility Termination Date. If any amounts are paid to Holdings or any Subsidiary Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

12.06 Termination; Reinstatement. This guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or Holdings or any Subsidiary Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Guaranteed Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of Holdings and each Subsidiary Guarantor under this paragraph shall survive termination of this guaranty.

12.07 Subordination. Holdings and each Subsidiary Guarantor hereby subordinates the payment of all obligations and indebtedness of any Loan Party owing to Holdings or any Subsidiary Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrowers, to Holdings or any Subsidiary Guarantor as subrogee of the Secured Parties or resulting from Holdings or any Subsidiary Guarantor's performance under this guaranty, to the Payment in Full of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of the Borrowers to Holdings or any Subsidiary Guarantor shall be enforced and performance received by Holdings or any Subsidiary Guarantor as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of Holdings or any Subsidiary Guarantor under this guaranty.

12.08 Stay of Acceleration. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed, in connection with any case commenced by or against Holdings or any Subsidiary Guarantor or the Borrowers under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Holdings and each Subsidiary Guarantor immediately upon demand by the Secured Parties.

12.09 Condition of Borrowers. Holdings and each Subsidiary Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as Holdings and each Subsidiary Guarantor requires, and that none of the Secured Parties has any duty, and neither Holdings nor any Subsidiary Guarantor is relying on the Secured Parties at any time, to disclose to Holdings or any Subsidiary Guarantor any information relating to the business, operations or financial condition of the Borrowers or any other guarantor (Holdings and each Subsidiary Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

12.10 Keepwell. Each Guarantor that is a Qualified ECP hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP shall only be liable under this Section 12.10 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 12.10, or otherwise under this guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Guarantor that is a Qualified ECP under this Section shall remain in full force and effect until the Guaranteed Obligations have been paid in full in cash. Each Guarantor that is a Qualified ECP intends that this Section 12.10 constitute, and this Section 12.10 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

12.11 Limitation of Guaranty. Notwithstanding anything to the contrary herein or otherwise, the Borrowers, the Administrative Agent and the Lenders hereby irrevocably agree that the Guaranteed Obligations of Holdings and each Subsidiary Guarantor in respect of the guarantee set forth in this Section 12 at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of Holdings and such Subsidiary Guarantor not constituting a fraudulent transfer or conveyance after giving full effect to the liability under such guarantee set forth in this Section 12 and its related contribution rights but before taking into account any liabilities under any other guarantee by Holdings or such Subsidiary Guarantor.

[Remainder of page is intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

PURPLE INNOVATION, LLC, a Delaware limited liability company

By: Purple Innovation, Inc., its Manager

By: /s/ Bennett Nussbaum

Name: Bennett Nussbaum

Title: Chief Financial Officer and Treasurer

GUARANTORS:

PURPLE INNOVATION, INC., a Delaware corporation

By: /s/ Bennett Nussbaum

Name: Bennett Nussbaum

Title: Chief Financial Officer and Treasurer

INTELLIBED, LLC, a Delaware limited liability company

By: /s/ Casey K. McGarvey
Name: Casey K. McGarvey
Title: President, Treasurer and Secretary

ADMINISTRATIVE AGENT:

BANK OF MONTREAL, as Administrative Agent

By: /s/ Kara Goodwin
Name: Kara Goodwin
Title: Managing Director

LENDERS:

BANK OF MONTREAL, as a Lender, Letter of
Credit Issuer and Swing Line Lender

By: /s/ Kara Goodwin
Name: Kara Goodwin
Title: Managing Director

PLEDGE AND SECURITY AGREEMENT

dated as of August 7, 2023

among

PURPLE INNOVATION, LLC,

PURPLE INNOVATION, INC.

and

INTELLIBED, LLC,

as Grantors,

and

BANK OF MONTREAL,
as the Administrative Agent

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PLEDGE AND SECURITY AGREEMENT

This **PLEDGE AND SECURITY AGREEMENT**, dated as of August 7, 2023 (this “**Agreement**”), is made by each of the Grantors referred to below, in favor of Bank of Montreal (“**BMO**”), in its capacity as administrative agent for the Secured Parties (as defined in the Credit Agreement referred to below) (in such capacity, together with its successors and assigns in such capacity, if any, the “**Administrative Agent**”).

RECITALS:

WHEREAS, PURPLE INNOVATION, INC., a Delaware corporation (“**Holdings**”), PURPLE INNOVATION, LLC, a Delaware limited liability company (the “**Company**”), each subsidiary of Holdings listed as a “**Borrower**” on the signature pages thereto (together with the Company and each other Person that executes a joinder agreement and becomes a “**Borrower**” thereunder, each a “**Borrower**” and collectively, the “**Borrowers**”), INTELLIBED, LLC, a Delaware limited liability company (“**Intellibed**”), together with each other Person that executes a joinder agreement and becomes a “**Guarantor**” thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each a “**Guarantor**” and collectively with Holdings and Intellibed, the “**Guarantors**,” and together with the Borrowers and each other Person that executes a supplement hereto and becomes an “**Additional Grantor**” hereunder, each a “**Grantor**” and collectively, the “**Grantors**”), the lenders from time to time party thereto (each a “**Lender**” and collectively, the “**Lenders**”) and the Administrative Agent are parties to that certain Credit Agreement, dated as of the date hereof (such agreement, as amended, restated, supplemented, modified or otherwise changed from time to time, including any replacement agreement therefor, being hereinafter referred to as the “**Credit Agreement**”);

WHEREAS, pursuant to the Credit Agreement, the Lenders have agreed to make certain revolving loans, which revolving loans will include subfacilities for the issuance of letters of credit and swingline loans, together with other credit extensions described therein, to the Borrowers (each a “**Loan**” and collectively, the “**Loans**”);

WHEREAS, it is a condition precedent to the Lenders making the Loans to the Borrowers that each Grantor shall have granted to the Administrative Agent, for the benefit of the Secured Parties, a pledge of and security interest in (a) the outstanding Equity Interests (as defined in the Credit Agreement) and indebtedness from time to time owned by such Grantor, and (b) substantially all other personal property and fixtures of such Grantor;

WHEREAS, the Grantors are mutually dependent on each other in the conduct of their respective businesses as an integrated operation, with credit needed from time to time by each Grantor often being provided through financing obtained by the other Grantors and the ability to obtain such financing being dependent on the successful operations of all of the Grantors as a whole; and

WHEREAS, each Grantor has determined that the execution, delivery and performance of this Agreement directly benefit, and are in the best interest of, such Grantor;

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Administrative Agent, the Letter of Credit Issuer and the Lenders to make and maintain the Loans and to issue or participate in Letters of Credit and Swing Line Loans and to provide other financial accommodations to the Borrowers pursuant to the Credit Agreement, the Grantors hereby jointly and severally agree with the Administrative Agent, for the benefit of the Secured Parties, as follows:

Section 1 Definitions.

(a) All capitalized terms used in this Agreement and the recitals hereto which are defined in the Credit Agreement or in Article 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (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 UCC on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as the Administrative Agent may otherwise determine; provided further that, if by reason of any mandatory provisions of law, the perfection, the effect of perfection or non-perfection or priority of the security interests granted to the Administrative Agent pursuant to this Agreement are governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, then “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of such perfection, effect of perfection or non-perfection or priority; provided still further, for purposes of the definition of Excluded Assets, “UCC” shall mean the Uniform Commercial Code of any applicable jurisdiction.

(b) The following terms shall have the respective meanings provided for in the UCC: “Accounts,” “Account Debtor,” “Cash Proceeds,” “Certificate of Title,” “Chattel Paper,” “Commercial Tort Claim,” “Commodity Account,” “Commodity Contracts,” “Deposit Account,” “Documents,” “Electronic Chattel Paper,” “Equipment,” “Fixtures,” “General Intangibles,” “Goods,” “Instruments,” “Inventory,” “Investment Property,” “Letter-of-Credit Rights,” “Noncash Proceeds,” “Payment Intangibles,” “Proceeds,” “Promissory Notes,” “Record,” “Security Account,” “Software,” “Supporting Obligations” and “Tangible Chattel Paper.”

(c) Reference is hereby made to Section 1.02 of the Credit Agreement, the terms of which are hereby incorporated by reference herein as if fully set forth herein.

(d) As used in this Agreement, the following terms shall have the respective meanings indicated below:

“**Additional Collateral**” has the meaning specified therefor in Section 4(a) hereof.

“**Certificated Entities**” has the meaning specified therefor in Section 5(q) hereof.

“**Copyrights**” means any and all rights in any published and unpublished works of authorship, including (i) copyrights and moral rights, (ii) copyright registrations and recordings thereof and all applications in connection therewith including those listed on Schedule II hereto, (iii) all reissues, renewals, continuations, extensions, restorations and reversions thereof, (iv) income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (v) the right to sue for past, present, and future infringements thereof, (vi) rights and privileges arising under applicable Law with respect to each Grantor’s use of such copyrights and (vii) all of each Grantor’s rights corresponding thereto throughout the world.

“**Excluded Assets**” (a) To the extent that applicable law requires that a Subsidiary of any Grantor issue nominee or directors’ qualifying shares, such nominee or qualifying shares, (b) any intent-to-use trademark application prior to the filing and acceptance of a “Statement of Use”, “Declaration of Use”, “Amendment to Allege Use” or similar notice and/or filing with respect thereto, only to the extent, if any, that, and solely during the period if any, in which, the grant of a security interest therein may impair the validity or enforceability, or result in the voiding, of such intent-to-use trademark application or any registration issuing therefrom under applicable Law, (c) other assets to the extent Administrative Agent determines in its sole judgment that the cost of obtaining such pledge or security interest is excess in relation to the benefit thereof, (d) any Equity Interest of any Excluded Subsidiary acquired, owned or otherwise held directly or indirectly by any Grantor; provided, that, 65% of the Voting Equity Interests and 100% of the non-voting Equity Interests of any such Excluded Subsidiary directly owned by such Grantor may be pledged as Collateral and shall not, for the avoidance of doubt, be deemed to be Excluded Assets, (e) governmental licenses or state or local franchises, charters and authorizations to the extent that the Administrative Agent may not validly possess a security interest therein under applicable laws (including, without limitation, rules and regulations of any governmental authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization not obtained, other than to the extent such prohibition or limitation is rendered ineffective under the UCC or other applicable law notwithstanding such prohibition or was created in contemplation of the grant of security hereunder and other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable law notwithstanding such prohibition, (f) any of such Grantor’s right, title or interest in any license, contract or agreement to which such Grantor is a party as of the date hereof or any of its right, title or interest thereunder to the extent, but only to

the extent, that such a grant would, under the express terms of such license, contract or agreement on the date hereof result in a breach of the terms of, or constitute a default under, such license, contract or agreement (other than to the extent that any such term (i) has been waived, (ii) would be rendered ineffective pursuant to Sections 9-406, 9-408, 9-409 of the UCC or other applicable provisions of the Uniform Commercial Code of any relevant jurisdiction or any other applicable law (including any Debtor Relief Laws) or principles of equity or (iii) was created in contemplation of the grant of security hereunder (for the avoidance of doubt, liens incurred under Section 8.02(i) of the Credit Agreement shall be deemed to not have been created in contemplation of the grant of security hereunder); provided, that (x) immediately upon the ineffectiveness, lapse, termination or waiver of any such provision, the Collateral shall include, and such Grantor shall be deemed to have granted a security interest in, all such right, title and interest as if such provision had never been in effect and (y) the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect the Administrative Agent's unconditional continuing security interest in and liens upon any rights or interests of a Grantor in or to the proceeds of, or any monies due or to become due under, any such license, contract or agreement, (g) any property of any Grantor, to the extent that any applicable Law or Governmental Authority prohibits the creation of a Lien thereon or such creation would require a consent of any Governmental Authority or any other Person under applicable law (other than any Grantor) that has not been obtained (it being understood that there shall be no requirement to obtain such consent, approval, license or authorization), in each case to the extent the applicable prohibition or requirement for consent is not rendered ineffective pursuant to applicable provisions of the UCC or other applicable law and was not created in contemplation of the grant of security hereunder, (h) any margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and (i) any particular assets if, and for so long as, in each case, agreed by the Administrative Agent, the cost of creating or perfecting such pledges or security interests in such assets exceed the practical benefits to be obtained by the Secured Parties therefrom; provided, however, that Excluded Assets shall not include any Proceeds of property described in clauses (a) through (i) above (unless such Proceeds are also described in such clauses). Notwithstanding the foregoing, no asset included in the Borrowing Base as reflected in the most recent Borrowing Base Certificate delivered to the Administrative Agent shall constitute an "Excluded Asset".

"Existing Issuers" has the meaning specified therefor in the definition of the term "Pledged Shares."

"Goodwill" means the goodwill connected with a Person's business including, without limitation, (i) all goodwill connected with the use of and symbolized by any of the other Intellectual Property in which such Person has any interest, (ii) all know-how, trade secrets, customer and supplier lists, technology, proprietary information, inventions (whether or not patentable), methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any Person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill, and (iii) all product lines of such Person's business.

"Intellectual Property" means any and all Patents, Copyrights, Licenses, Trade Secrets, Trademarks and Goodwill.

"Intellectual Property Security Agreement" means any agreement executed on or after the Closing Date in accordance with the Credit Agreement and this Agreement confirming or effecting the grant of any Lien on Patents, Trademarks and/or Copyrights owned by any Grantor, substantially in the form of Exhibit B hereto.

"Licenses" means, with respect to any Person (the **"Specified Party"**), (i) any licenses, distribution agreements or other similar rights provided to the Specified Party in or with respect to Intellectual Property owned or controlled by any other Person, and (ii) any licenses or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by the Specified Party, in each case, including (A) any software license agreements (other than license agreements for commercially available off-the-shelf software that is generally available to the public which have been licensed to a Grantor pursuant to end-user licenses), (B) the license agreements listed on Schedule III hereto, and (C) the right to use any of the licenses or other similar rights described in this definition in connection with the enforcement of the Administrative Agent's and the Lenders' rights under the Loan Documents.

"Patents" means patents and patent applications (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), including the patents and patent applications listed on Schedule IV hereto, together with any and all (i) rights and privileges arising under applicable Law with respect to use of any patents, (ii) inventions and improvements described and claimed therein, (iii) continuations, divisionals, continuations-in-part, extensions, re-examinations, reissues, and renewals thereof and improvements thereon, (iii) income, fees, royalties, damages, claims and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for

past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) rights corresponding thereto throughout the world.

“Pledged Debt” means the indebtedness described in Schedule X hereto and all indebtedness from time to time owned or acquired by a Grantor, the promissory notes and other Instruments evidencing any or all of such indebtedness, and all interest, cash, Instruments, Investment Property, financial assets, securities, Equity Interests, other equity interests, stock options and commodity contracts, notes, debentures, bonds, promissory notes or other evidences of indebtedness and all other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness.

“Pledged Interests” means, collectively, (a) the Pledged Debt, (b) the Pledged Shares and (c) all security entitlements in any and all of the foregoing.

“Pledged Issuer” has the meaning specified therefor in the definition of the term “Pledged Shares.”

“Pledged Shares” means (a) the shares of Equity Interests described in Schedule XI hereto, whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, issued by the Persons described in such Schedule XI (the **“Existing Issuers”**), (b) the shares of Equity Interests at any time and from time to time acquired by a Grantor of any and all Persons now or hereafter existing (such Persons, together with the Existing Issuers, being hereinafter referred to collectively as the **“Pledged Issuers”** and each individually as a **“Pledged Issuer”**), whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, and (c) the certificates representing such shares of Equity Interests, all options and other rights, contractual or otherwise, in respect thereof and all dividends, distributions, cash, Instruments, Investment Property, financial assets, securities, Equity Interests, other equity interests, stock options and commodity contracts, notes, debentures, bonds, promissory notes or other evidences of indebtedness and all other property (including, without limitation, any stock dividend and any distribution in connection with a stock split) from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests.

“Rolling Stock” means all trucks, trailers and tractors, wherever located, owned by, and used in the ordinary course of business of, the Grantors, but excluding any such property which is being held for resale or is leased to the Grantors.

“Secured Obligations” has the meaning assigned to such term in Section 3 hereof.

“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.

“Titled Collateral” means all Collateral for which the title to such Collateral is governed by a Certificate of Title or certificate of ownership, including, without limitation, all motor vehicles (including, without limitation, all trucks, trailers, tractors, service vehicles, automobiles and other mobile equipment) for which the title to such motor vehicles is governed by a Certificate of Title or certificate of ownership.

“Trade Secrets” means, with respect to any Person, all of such Person’s right, title and interest in and to the following: (a) any and all confidential and proprietary information, including unpatented inventions, invention disclosures, engineering or other data, information, production procedures, know-how, financial data, customer lists, supplier lists, business and marketing plans, processes, schematics, algorithms, techniques, analyses, proposals, source code, data, databases and data collections, in each case, that constitutes a trade secret under applicable law and derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons able to obtain economic value from its disclosure or use; (b) all rights to sue for past, present or future infringements thereof, and (c) all rights corresponding to any of the foregoing throughout the world.

“Trademarks” means any and all trademarks, trade names, registered trademarks, trademark applications, service marks, slogans, sound marks, registered service marks, brand names, certification marks, collective marks, uniform resource locations (URL’s), domain names, logos, symbols, trade dress, assumed names, corporate names, fictitious names and service mark applications, and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country or any political subdivision thereof) including the registrations and applications listed on Schedule V hereto, together with (i) all extensions, divisions, modifications and renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and

damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) the goodwill of each Grantor's business symbolized by the foregoing or connected therewith, (v) all rights and privileges arising under applicable Law with respect to each Grantor's use of any trademarks and (v) all of each Grantor's rights corresponding thereto throughout the world.

Section 2 Grant of Security Interest. As collateral security for the payment, performance and observance of all of the Secured Obligations, each Grantor hereby pledges and collaterally assigns to the Administrative Agent (and its agents and designees), and grants to the Administrative Agent (and its agents and designees), for the benefit of the Secured Parties, a continuing security interest in, all personal property and Fixtures of such Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind and description, tangible or intangible, including, without limitation, the following (all being collectively referred to herein as the “**Collateral**”):

- (a) all Accounts;
- (b) all Goods, including, without limitation, all Equipment (including Rolling Stock), Fixtures and Inventory (including work in progress and raw materials);
- (c) all Chattel Paper (whether tangible or electronic);
- (d) the Commercial Tort Claims specified on Schedule IX;
- (e) all Deposit Accounts, Securities Accounts, Commodities Accounts, all cash, and all other property from time to time deposited therein or otherwise credited thereto and the monies and property in the possession or under the control of the Administrative Agent or any Lender or any affiliate, representative, agent or correspondent of the Administrative Agent or any Lender;
- (f) all Documents;
- (g) all General Intangibles (including, without limitation, all Payment Intangibles);
- (h) all Intellectual Property and Licenses, together with all income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof;
- (i) all Instruments (including, without limitation, Promissory Notes);
- (j) all Investment Property;
- (k) all Letter-of-Credit Rights;
- (l) all Money, cash and cash equivalents;
- (m) all Pledged Interests;
- (n) all Supporting Obligations;

(o) all other tangible and intangible personal property of such Grantor (whether or not subject to the UCC), including, without limitation, all bank and other accounts and all cash and all investments therein, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of such Grantor described in the preceding

clauses of this Section 2 hereof (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by such Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including, without limitation, all tapes, disks, cards, Software, data and computer programs in the possession or under the control of such Grantor or any other Person from time to time acting for such Grantor that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 2 hereof or are otherwise necessary or helpful in the collection or realization thereof; and

(p) all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral;

in each case howsoever such Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

Notwithstanding anything herein to the contrary, the term "Collateral" shall not include, and no Grantor is pledging, nor granting a security interest hereunder in, any Excluded Assets; provided, however, that if and when any asset shall cease to be an Excluded Asset, a Lien on and security interest in such property shall immediately be deemed granted hereunder.

Section 3 Security for Secured Obligations. The security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether now existing or hereafter incurred (the "**Secured Obligations**");

(a) the prompt payment by each Grantor, as and when due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it in respect of (i) the Obligations, and (ii) in the case of a Guarantor, all amounts from time to time owing by such Grantor in respect of its guaranty made pursuant to Article XII of the Credit Agreement or under any other Guarantee to which it is a party, with respect to such Obligations; and

(b) the due performance and observance by each Grantor of all of its other obligations from time to time existing in respect of the Loan Documents.

Section 4 Delivery of the Pledged Interests.

(a) Subject to the terms of the Intercreditor Agreement, the Grantors shall deliver to the Administrative Agent all promissory notes currently evidencing the Pledged Debt with a face value in excess of \$100,000 individually or in the aggregate and, subject to the Post-Closing Agreement, all certificates currently representing the Pledged Shares on or prior to the execution and delivery of this Agreement. Subject to the terms of the Intercreditor Agreement, the Grantors shall deliver to the Administrative Agent all other promissory notes and Instruments with a face value in excess of \$100,000 individually or in the aggregate, and certificates constituting Pledged Interests from time to time required to be pledged to the Administrative Agent pursuant to the terms of this Agreement or the Credit Agreement (the "**Additional Collateral**") promptly upon, but in any event within five (5) Business Days of, receipt thereof by or on behalf of any of the Grantors. Subject to the terms of the Intercreditor Agreement, all such promissory notes, certificates and Instruments shall be held by or on behalf of the Administrative Agent pursuant hereto and the Grantors shall deliver all such promissory notes, certificates and Instruments required to be delivered to the Administrative Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment or undated stock powers executed in blank, all in form and substance reasonably satisfactory to the Administrative Agent. If any Pledged Interests consist of uncertificated securities, unless the last sentence of this clause (a) is applicable thereto, such Grantor shall cause each issuer of such securities to agree that it will comply with instructions originated by the Administrative Agent with respect to such securities without further consent by such Grantor and such Grantor shall not permit any issuer of such Pledged Interests to (i) enter into any agreement with any Person, other than the Administrative Agent or any holder of a Permitted Lien that is party to the Intercreditor Agreement or another intercreditor agreement acceptable to the Administrative Agent, whereby such issuer effectively delivers "control" of such partnership interest or limited liability company interest (as applicable) under the UCC to such Person, or (ii) allow such partnership interest or limited liability company interest (as applicable) to become a "security" within the meaning of Article 8 of the UCC unless such Grantor certifies such security and complies with the procedures set forth in Section 6(n). If any Pledged Interest of any Grantor is or shall become represented by an uncertificated security (as such term is defined in the UCC), such Grantor shall not consent to or permit the issuer thereof to take any action to grant "control" (within the meaning of Section 8-106 of the UCC) thereof to any person other than the Administrative Agent or Term Loan Agent, as applicable. Subject to the terms of the Intercreditor Agreement, each Grantor that is an issuer of any uncertificated Pledged Interest described in this Section 4(a)(i) hereby agrees to comply with all instructions from the Administrative Agent without further consent of the registered

owner thereof. Subject to the terms of the Intercreditor Agreement, if any Pledged Interests consist of security entitlements, such Grantor shall transfer such security entitlements to the Administrative Agent (or its custodian, nominee or other designee), or cause the applicable securities intermediary to agree that it will comply with entitlement orders by the Administrative Agent without further consent by such Grantor.

(i) Within five (5) Business Days of the receipt by a Grantor of any Additional Collateral, such Grantor shall deliver to the Administrative Agent a Pledge Amendment, duly executed by such Grantor, in substantially the form of Exhibit A hereto (a “**Pledge Amendment**”), in respect of the Additional Collateral that must be pledged pursuant to this Agreement and the Credit Agreement. The Pledge Amendment shall from and after delivery thereof constitute part of Schedules X and XI hereto, as applicable. Each Grantor hereby authorizes the Administrative Agent to attach each Pledge Amendment to this Agreement and agrees that all promissory notes, certificates or Instruments listed on any Pledge Amendment delivered to the Administrative Agent shall for all purposes hereunder constitute Pledged Interests and such Grantor shall be deemed upon delivery thereof to have made the representations and warranties set forth in Section 5 hereof with respect to such Additional Collateral.

(b) If any Grantor shall receive, by virtue of such Grantor’s being or having been an owner of any Pledged Interests, any (i) stock certificate (including, without limitation, any certificate representing a stock dividend or distribution in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares, stock split, spin-off or split-off), promissory note or other Instrument, (ii) option or right, whether as an addition to, substitution for, or in exchange for, any Pledged Interests, or otherwise, (iii) dividends or distributions payable in cash (except such dividends and/or distributions permitted to be retained by any such Grantor pursuant to Section 7 hereof) or in securities or other property or (iv) dividends, distributions, cash, Instruments, Investment Property and other property in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in surplus, such Grantor shall receive such stock certificate, promissory note, Instrument, option, right, payment or distribution in trust for the benefit of the Administrative Agent and the Term Loan Agent, shall segregate it from such Grantor’s other property and, subject to the terms of the Intercreditor Agreement, shall deliver it forthwith to the Administrative Agent, in the exact form received, with any necessary endorsement and/or appropriate stock powers duly executed in blank, to be held by the Administrative Agent as Pledged Interests and as further collateral security for the Secured Obligations.

(c) The Grantors agree that the pledge of the shares of Equity Interests of any Pledged Issuer who is a Foreign Subsidiary may be supplemented by one or more separate pledge agreements, deeds of pledge, share charges, or other similar agreements or instruments, executed and delivered by the relevant Grantors in favor of the Administrative Agent, which pledge agreements will provide for the pledge of such shares of Equity Interests in accordance with the laws of the applicable foreign jurisdiction. With respect to such shares of Equity Interests, the Administrative Agent may, at any time and from time to time, in its sole discretion, take actions in such foreign jurisdictions that will result in the perfection of the Lien created in such shares of Equity Interests.

Section 5 Representations and Warranties. Each Grantor jointly and severally represents and warrants as follows:

(a) Schedule I hereto sets forth (i) the exact legal name of each Grantor, (ii) the state or jurisdiction of organization of each Grantor, (iii) the type of organization of each Grantor and (iv) the organizational identification number of each Grantor or states that no such organizational identification number exists.

(b) There is no pending or, to the knowledge of any Grantor, threatened action, suit, proceeding, claim or dispute before any court or other Governmental Authority or any arbitrator, or any order, judgment or award by any court or other Governmental Authority or any arbitrator, that may adversely affect the grant by any Grantor, or the perfection, of the security interest purported to be created hereby in the Collateral, or the exercise by the Administrative Agent of any of its rights or remedies hereunder.

(c) All Equipment, Fixtures, Inventory and other Goods now existing are, and all Equipment, Fixtures, Inventory and other Goods hereafter existing will be, located at the addresses specified therefor in Schedule VI hereto (as amended, supplemented or otherwise modified from time to time in accordance with Section 6(b)), except with respect to assets out for processing in the Ordinary

Course of Business, in transit in the Ordinary Course of Business, items out for repair in the Ordinary Course of Business or in the possession of an employee in the Ordinary Course of Business or intended for personal use (including laptops and cell phones). Each Grantor's chief place of business and chief executive office, the place where such Grantor keeps its Records concerning Accounts and all originals of all Chattel Paper are located at the addresses specified therefor in Schedule VI hereto (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof). None of the Accounts is evidenced by Promissory Notes or other Instruments. Set forth in Schedule VII hereto is a complete and accurate list, as of the date of this Agreement, of each Deposit Account, Securities Account and Commodities Account of each Grantor, together with the name and address of each institution at which each such Account is maintained, the account number for each such Account and a description of the purpose of each such Account. Set forth in Schedule V hereto is (i) a complete and correct list of each trade name used by each Grantor and (ii) the name of, and each trade name used by, each Person from which such Grantor has acquired any substantial part of the Collateral within five years of the date hereof.

(d) As of the Closing Date, (i) Schedule II provides a complete and correct list of all registered Copyrights owned by any Grantor, all applications for registration of Copyrights owned by any Grantor, and all other Copyrights owned by any Grantor and material to the conduct of the business of any Grantor; (ii) Schedule III provides a complete and correct list of all material Licenses entered into by any Grantor; (iii) Schedule IV provides a complete and correct list of all Patents owned by any Grantor and all applications for Patents owned by any Grantor; and (iv) Schedule V provides a complete and correct list of all registered Trademarks owned by any Grantor, all applications for registration of Trademarks owned by any Grantor, and all other Trademarks owned by any Grantor and material to the conduct of the business of any Grantor.

(e) (A) To the knowledge of each Grantor, such Grantor owns, or holds licenses in, or otherwise possesses legally enforceable rights in, all Intellectual Property that is reasonably necessary to the operation of its business as currently conducted, or (B) each Grantor is the sole and exclusive owner or valid licensee of Intellectual Property (free and clear of any Liens) used by it and, except for Intellectual Property licensed on a non-exclusive basis, has sole and exclusive rights to the use and distribution therefor or the material covered thereby in connection with the services or products in respect of which such Intellectual Property are currently being used, sold, licensed or distributed.

(i) No claims with respect to the Intellectual Property rights of any Grantor are pending or, to the knowledge of any Grantor, threatened against any Grantor or, to the knowledge of any Grantor, any other Person, (i) alleging that the manufacture, sale, licensing or use of any Intellectual Property as now manufactured, sold, licensed or used by any Grantor or any third party infringes on, or misappropriates or otherwise violates any intellectual property rights of any third party, (ii) against the use by any Grantor or any third party of any Intellectual Property or technology, know-how or computer software or (iii) challenging the ownership by any Grantor, or the validity or effectiveness, of any such Intellectual Property.

(f) No Grantor has infringed on, or misappropriated or violated, any intellectual property rights of any third party and none of the Intellectual Property rights of any Grantor infringes on, or misappropriates or otherwise violates, any intellectual property rights of any third party. No Grantor is aware of any third party claim that any of its Intellectual Property is invalid or unenforceable, challenging such Grantor's rights to such Intellectual Property or any valid basis for such claims.

(g) All registered Copyrights, registered Trademarks, and issued Patents that are owned by such Grantor and necessary to the conduct of its business are valid, subsisting and enforceable and have at all times been in compliance in all material respects with all laws, rules, regulations, and orders of any Governmental Authority applicable thereto.

(h) Each Grantor has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all Trade Secrets owned by such Grantor that are necessary in the business of such Grantor.

(i) Other than software which by the terms of its own license explicitly permits the licensee to distribute the software together with other commercial programs with no restrictions on such Grantor's ability to charge fees for such distribution and with no restriction on such Grantor's right to receive payments for transfer of its Intellectual Property, no open source or public library software, including any version of any software licensed pursuant to any GNU public license, is, in whole or in part, embodied or incorporated, in any manner, in any Grantor's software products that are licensed or distributed by any Grantor. No open source or public library software licensed pursuant to any GNU public license which requires any Grantor to license such Grantor's software products to third parties, or

any other license which requires any Grantor to license such Grantor's software products to third parties, is embodied or incorporated, in any manner, in any Grantor's source code.

(j) The Existing Issuers set forth in Schedule XI identified as a Subsidiary of a Grantor are each such Grantor's only Subsidiaries existing on the date hereof. The Pledged Shares have been duly authorized and validly issued and, to the extent applicable, are fully paid and nonassessable and the holders thereof are not entitled to any preemptive, first refusal or other similar rights except as set forth on Schedule XI hereto. Except as noted in Schedule XI hereto, the Pledged Shares constitute 100% of the issued shares of Equity Interests of the Pledged Issuers as of the date hereof. All other shares of Equity Interests constituting Pledged Interests will be duly authorized and validly issued and, to the extent applicable, fully paid and nonassessable.

(k) The promissory notes currently evidencing the Pledged Debt, if any, have been, and all other promissory notes from time to time evidencing Pledged Debt, when executed and delivered, to the applicable Grantor's knowledge, will have been, duly authorized, executed and delivered by the respective makers thereof, and all such promissory notes are or will be, as the case may be, legal, valid and binding obligations of such makers, enforceable against such makers in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(l) The Grantors are and will be at all times the sole and exclusive owners of, or otherwise have and will have adequate rights in, the Collateral free and clear of any Lien except for the Permitted Liens. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording or filing office except such as may have been filed to perfect or protect any Permitted Lien, other than those that will be released on the Closing Date.

(m) The exercise by the Administrative Agent of any of its rights and remedies hereunder will not contravene any law or any contractual restriction binding on or otherwise affecting any Grantor or any of its properties and will not result in, or require the creation of, any Lien upon or with respect to any of its properties (other than as set forth in this Agreement).

(n) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person, is required for (i) the due execution, delivery and performance by any Grantor of this Agreement, (ii) the grant by any Grantor of the security interest purported to be created hereby in the Collateral or (iii) the exercise by the Administrative Agent of any of its rights and remedies hereunder, except, in the case of this clause (iii), as may be required in connection with any sale of any Pledged Interests by laws affecting the offering and sale of securities generally, or, in each case, as required under the UCC. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person, is required for the perfection of the security interest purported to be created hereby in the Collateral in the United States, except (A) for the filing under the UCC as in effect in the applicable jurisdiction of the financing statements described in Schedule VIII hereto, all of which financing statements have been duly filed and are in full force and effect, (B) with respect to the perfection of the security interest created hereby in the United States Intellectual Property and Licenses, for the recording of the appropriate Grant of a Security Interest, substantially in the form of Exhibit B hereto in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, (C) with respect to the perfection of the security interest created hereby in Titled Collateral, for the submission of an appropriate application requesting that the Lien of the Administrative Agent be noted on the Certificate of Title or certificate of ownership, completed and authenticated by the applicable Grantor, together with the Certificate of Title or certificate of ownership, with respect to such Titled Collateral, to the appropriate Governmental Authority, (D) with respect to any action that may be necessary to obtain control of Collateral constituting Deposit Accounts, Securities Accounts, Commodities Accounts, Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights, the taking of such actions, and (E) the Administrative Agent's having possession of all Documents, Chattel Paper, Instruments and cash constituting Collateral (subclauses (A), (B), (C), (D), and (E), each a "**Perfection Requirement**" and collectively, the "**Perfection Requirements**").

(o) This Agreement creates a legal, valid and enforceable security interest in favor of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral, as security for the Secured Obligations. The compliance with the Perfection Requirements will result in the perfection of such security interests. Such security interests are, or in the case of Collateral in which any Grantor

obtains rights after the date hereof, will be, perfected, first priority security interests to the extent required under this Agreement, subject in priority only to the Permitted Liens that, pursuant to the definition of the term “Permitted Liens,” are not prohibited from being prior to the Liens in favor of the Administrative Agent, for the benefit of the Secured Parties, and the recording of such instruments of assignment described above. Such Perfection Requirements and all other action necessary or desirable to perfect and protect such security interest have been duly made or taken, except for (i) the Administrative Agent’s having possession of all Instruments, Documents, Chattel Paper and cash constituting Collateral after the date hereof, (ii) the Administrative Agent’s having control of all Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights constituting Collateral after the date hereof, (iii) the submission of an appropriate application requesting that the Lien of the Administrative Agent be noted on the Certificate of Title or certificate of ownership, completed and authenticated by the applicable Grantor, together with the Certificate of Title or certificate of ownership, with respect to such Titled Collateral and (iv) the other filings and recordings and actions described in Section 5(n) hereof.

(p) As of the date hereof, no Grantor holds any Commercial Tort Claims or is aware of any such pending claims, except for such claims described in Schedule IX.

(q) (i) With respect to each Grantor and its Subsidiaries that is a partnership or a limited liability company and whose partnership interests or membership interests, as applicable, are evidenced by a certificate, each such Person has irrevocably opted into (and has caused each of its Subsidiaries that is a partnership or a limited liability company, and a Pledged Issuer to opt into) Article 8 of the UCC (collectively, the “**Certificated Entities**”). Such interests are securities for purposes of Article 8 of any relevant UCC. (ii) With respect to each Grantor and its Subsidiaries that is a partnership or a limited liability company and is not a Certificated Entity, the partnership interests or membership interests of each such Person is not (A) dealt in or traded on securities exchanges or in securities markets, (B) securities for purposes of Article 8 of any relevant UCC, (C) investment company securities within the meaning of Section 8-103 of any relevant UCC and (D) evidenced by a certificate. Such partnership interests or membership interests constitute General Intangibles.

(r) With respect to each Grantor’s Credit Card Receivables included in any Borrowing Base Certificate as being Eligible Credit Card Receivables (except as disclosed therein (specifically or by exclusion of any such Credit Card Receivable from the Borrowing Base)), all such Credit Card Receivables are Eligible Credit Card Receivables as of the date of such Borrowing Base Certificate. In addition, with respect to all of its Credit Card Receivables included in any Borrowing Base Certificate as being Eligible Credit Card Receivables, except as disclosed in writing to the Administrative Agent (specifically or by exclusion of any such Credit Card Receivable from the Borrowing Base), (A) the amounts shown on all invoices, statements and the most recent Borrowing Base Certificate with respect thereto are owing to such Grantor as indicated thereon and are not in any way contingent and (B) payments that have been made thereon have been promptly delivered to a Controlled Deposit Account to the extent required pursuant to Section 4.04 of the Credit Agreement.

Section 6 Covenants as to the Collateral. So long as any of the Secured Obligations (whether or not due) shall remain unpaid (other than contingent obligations for which no claim has been asserted) or any Lender shall have any Commitment under the Credit Agreement, unless the Administrative Agent shall otherwise consent in writing:

(a) Further Assurances. Each Grantor will at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that may be necessary or that the Administrative Agent may reasonably request in order (i) to, subject to the Intercreditor Agreement and except as otherwise permitted by this Agreement, perfect and protect, or maintain the perfection of, the security interest and Lien purported to be created hereby (including with respect to jurisdictions outside of the United States of America, any state thereof and the District of Columbia, to the extent reasonably requested by the Administrative Agent), and to take commercially reasonable efforts to defend the security interest of the Administrative Agent in the Collateral and the priority thereof against any Lien not expressly permitted hereunder or under the Credit Agreement or other Loan Documents; (ii) to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) to otherwise to effect the purposes of this Agreement, including, without limitation: (A) marking conspicuously all Chattel Paper and Instruments with a face value in excess of \$100,000 individually or in the aggregate, Licenses and, at the request of the Administrative Agent, all of its Records pertaining to the Collateral with a legend, in form and substance reasonably satisfactory to the Administrative Agent, indicating that such Chattel Paper, Instrument, License or Collateral is subject to the security interest created hereby, (B) if any Account shall be evidenced by a Promissory Note or other Instrument or Chattel Paper with a face value in excess of \$100,000 individually or in the aggregate, subject to the Intercreditor Agreement, delivering and pledging to the Administrative Agent such Promissory Note, other Instrument or Chattel Paper, duly endorsed and accompanied by executed instruments of transfer

or assignment, all in form and substance reasonably satisfactory to the Administrative Agent, (C) executing and filing (to the extent, if any, that such Grantor's signature is required thereon) or authenticating the filing of, such financing or continuation statements, or amendments thereto, (D) with respect to United States pending or registered Intellectual Property hereafter existing and not covered by an appropriate security interest grant, the executing and recording in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, appropriate instruments granting a security interest, as may be necessary or desirable or that the Administrative Agent may request in order to perfect and preserve the security interest purported to be created hereby, (E) delivering to the Administrative Agent irrevocable proxies in respect of the Pledged Interests, (F) furnishing to the Administrative Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Administrative Agent may reasonably request, all in reasonable detail, (G) if at any time after the date hereof, any Grantor acquires or holds any Commercial Tort Claim which exceeds \$100,000, promptly notifying the Administrative Agent in a writing signed by such Grantor setting forth a brief description of such Commercial Tort Claim and granting to the Administrative Agent a security interest therein and in the proceeds thereof, which writing shall incorporate the provisions hereof and shall be in form and substance reasonably satisfactory to the Administrative Agent, (H) upon the acquisition after the date hereof by any Grantor of any Titled Collateral (other than Equipment that is subject to a purchase money security interest permitted by Section 8.02(i) of the Credit Agreement), immediately notifying the Administrative Agent of such acquisition, setting forth a description of the Titled Collateral acquired and a good faith estimate of the current value of such Titled Collateral, and if so requested by the Administrative Agent, immediately causing the Administrative Agent to be listed as the lienholder on such Certificate of Title or certificate of ownership and delivering evidence of the same to the Administrative Agent, and (I) taking all actions required by law in any relevant UCC jurisdiction, or by other law as applicable in any foreign jurisdiction. No Grantor shall take or fail to take any action which would in any manner impair the validity or enforceability of the Administrative Agent's security interest in and Lien on any Collateral.

(b) Location of Equipment and Inventory. Each Grantor will keep the Equipment and Inventory (other than Equipment and Inventory sold in the Ordinary Course of Business in accordance with Section 6(h) hereof, Inventory out for processing in the Ordinary Course of Business, in transit in the Ordinary Course of Business, out for repair in the Ordinary Course of Business, in the possession of an employee in the Ordinary Course of Business or intended for personal use (including laptops and cell phones)) at the locations specified in Schedule VI hereto or, upon not less than thirty (30) days' prior written notice to the Administrative Agent accompanied by a new Schedule VI hereto indicating each new location of the Equipment and Inventory, at such other locations in the continental United States as the Grantors may elect (or other locations approved by the Administrative Agent in writing); provided that (i) all action has been taken to grant to the Administrative Agent a perfected, first priority security interest in such Equipment and Inventory (subject in priority only to Permitted Liens identified in clauses (c), (d), (i), (j), (n) and (o) of Section 8.02 of the Credit Agreement), and (ii) the Administrative Agent's rights in such Equipment and Inventory, including, without limitation, the existence, perfection and priority of the security interest created hereby in such Equipment and Inventory, are not adversely affected thereby.

(c) Condition of Equipment. Each Grantor will maintain or cause the Equipment which is necessary or useful in the proper conduct of its business to be maintained and preserved in good condition, repair and working order, ordinary wear and tear excepted, and will forthwith, or in the case of any loss or damage to any Equipment promptly after the occurrence thereof, make or cause to be made all repairs, replacements and other improvements in connection therewith which are necessary or desirable, consistent with past practice, or which the Administrative Agent may reasonably request to such end. Each Grantor will promptly furnish to the Administrative Agent a statement describing in reasonable detail any loss or damage in excess of \$250,000 individually or in the aggregate to any Equipment.

(d) Taxes, Etc. Each Grantor jointly and severally agrees to pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Equipment and Inventory, except to the extent otherwise provided in the Credit Agreement.

(e) Insurance. Each Grantor will, at its own expense, maintain insurance with respect to the Collateral in accordance with the terms of the Credit Agreement. Each Grantor will, if so requested by the Administrative Agent, deliver to the Administrative Agent original or duplicate insurance policies and, as often as the Administrative Agent may reasonably request, a report of a reputable insurance broker with respect to such insurance. Each Grantor will also, at the request of the Administrative Agent, execute and deliver instruments of assignment of such insurance policies and cause the respective insurers to acknowledge notice of such assignment.

(f) Provisions Concerning the Accounts and the Licenses.

(i) Each Grantor will, except as otherwise provided in this subsection (f), continue to collect, at its own expense, all amounts due or to become due under the Accounts. In connection with such collections, each Grantor may (and, if an Event of Default has occurred and is continuing, at the Administrative Agent's direction, will) take such action as such Grantor (or, if applicable, the Administrative Agent) may deem necessary or advisable to enforce collection or performance of the Accounts; provided, however, that the Administrative Agent shall have the right at any time, upon the occurrence and during the continuance of an Event of Default, to notify the Account Debtors or obligors under any Accounts of the assignment of such Accounts to the Administrative Agent and to direct such Account Debtors or obligors to make payment of all amounts due or to become due to such Grantor thereunder directly to the Administrative Agent or its designated agent and, upon such notification and at the expense of such Grantor and to the extent permitted by law, to enforce collection of any such Accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. After receipt by any Grantor of a notice from the Administrative Agent that the Administrative Agent has notified, intends to notify, or has enforced or intends to enforce a Grantor's rights against the Account Debtors or obligors under any Accounts as referred to in the proviso to the immediately preceding sentence, all amounts and proceeds (including Instruments) received by such Grantor in respect of the Accounts shall be received in trust for the benefit of the Administrative Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Administrative Agent or its designated agent in the same form as so received (with any necessary endorsement) to be held as cash collateral and applied as specified in Section 9(d) hereof. In addition, upon the occurrence and during the continuance of an Event of Default, other than in the ordinary course of business consistent with its past practice and in amounts which are not material to such Grantor, such Grantor will not (i) grant any extension of the time for payment of any Account, (ii) compromise or settle any Account for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Account, (iv) allow any credit or discount whatsoever on any Account or (v) amend, supplement or modify any Account in any manner that could adversely affect the value thereof.

(ii) Upon the occurrence and during the continuance of any breach or default under any material License by any party thereto other than a Grantor, (A) the relevant Grantor will, promptly after obtaining knowledge thereof, give the Administrative Agent written notice of the nature and duration thereof, specifying what action, if any, it has taken and proposes to take with respect thereto, (B) if an Event of Default has occurred and is continuing, no Grantor will, without the prior written consent of the Administrative Agent, declare or waive any such breach or default or affirmatively consent to the cure thereof or exercise any of its remedies in respect thereof, and (C) each Grantor will, upon written instructions from the Administrative Agent and at such Grantor's expense, take such action as the Administrative Agent may deem reasonably necessary or advisable in respect thereof.

(iii) Each Grantor will, at its expense, promptly deliver to the Administrative Agent a copy of each notice or other communication received by it by which any other party to any material License (A) declares a breach or default by a Grantor of any material term thereunder, (B) terminates such License or (C) purports to exercise any of its rights or affect any of its obligations thereunder, together with a copy of any reply by such Grantor thereto.

(iv) Each Grantor will exercise promptly and diligently each and every right which it may have under each License (other than any right of termination) that is necessary in the conduct of such Grantor's business and will duly perform and observe in all respects all of its obligations under each such License and will take all action necessary to maintain such Licenses in full force and effect. No Grantor will, without the prior written consent of the Administrative Agent, cancel, terminate, amend or otherwise modify in any respect, or waive any provision of, any License that is necessary in the conduct of such Grantor's business.

(g) Provisions Concerning the Pledged Interests. Each Grantor will

(i) at the Grantors' joint and several expense, promptly deliver to the Administrative Agent a copy of each material notice or other communication received by it in respect of the Pledged Interests;

(ii) at the Grantors' joint and several expense, defend the Administrative Agent's right, title and security interest in and to the Pledged Interests against the claims of any Person;

(iii) not make or consent to any amendment or other modification or waiver with respect to any Pledged Interests or enter into any agreement or permit to exist any restriction with respect to any Pledged Interests (other than as permitted under the Loan Documents); and

(iv) not vote the Pledged Interests to approve or permit the issuance of (A) any additional shares of any class of Equity Interests of any Pledged Issuer, except to the extent required by the Organizational Documents of the Borrower and not prohibited by the Credit Agreement, (B) any securities convertible voluntarily by the holder thereof or automatically upon the occurrence or non-occurrence of any event or condition into, or exchangeable for, any such shares of Equity Interests or (C) any warrants, options, contracts or other commitments entitling any Person to purchase or otherwise acquire any such shares of Equity Interests.

(h) Transfers and Other Liens.

(i) Except to the extent expressly permitted by Section 8.05 of the Credit Agreement, no Grantor will sell, assign (by operation of law or otherwise), lease, license, exchange or otherwise transfer or dispose of any of the Collateral.

(ii) Except to the extent expressly permitted by Section 8.02 of the Credit Agreement, no Grantor will create, suffer to exist or grant any Lien upon or with respect to any Collateral.

(i) Intellectual Property.

(i) Upon the request of the Administrative Agent, in order to facilitate filings with the United States Patent and Trademark Office and the United States Copyright Office, each Grantor shall execute and deliver to the Administrative Agent one or more Intellectual Property Security Agreements to further evidence the Administrative Agent's Lien on such Grantor's Patents, Trademarks, or Copyrights, and the General Intangibles of such Grantor relating thereto or represented thereby.

(ii) Each Grantor shall promptly notify the Administrative Agent of any infringement, misappropriation, or dilution of such Grantor's Intellectual Property or if any application for or registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office or the United States Copyright Office has become abandoned or dedicated to the public, or of any determination by a Governmental Authority (including the determination by the United States Patent and Trademark Office, the United States Copyright Office, or any court) abandoning such Grantor's ownership of any such Patent, Trademark or Copyright, its right to register the same, except, in each case, to the extent such abandonment or dedication to the public is permitted by Section 8.05(f)(ii) of the Credit Agreement, or to keep and maintain the same, and shall have the duty, with respect to Intellectual Property that is necessary in the conduct of such Grantor's business, to protect and diligently enforce and defend at such Grantor's expense such Intellectual Property, including (A) to diligently enforce and defend, including promptly suing for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and filing for opposition, interference, and cancellation against conflicting Intellectual Property rights of any Person, (B) to prosecute diligently any such trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement, (C) to prosecute diligently any such patent application that is part of the Patents pending as of the date hereof or hereafter until the termination of this Agreement, (D) to take all reasonable and necessary action to preserve and maintain all of such Grantor's Trademarks, Trade Secrets, Patents, Copyrights, Licenses, and its rights therein, including paying all maintenance fees and filing of applications for renewal, affidavits of use, and affidavits of noncontestability, and (E) to require all employees, consultants, and contractors of each Grantor who were involved in the creation or development of such Intellectual Property to sign agreements containing assignment of Intellectual Property rights and obligations of confidentiality. Each Grantor further agrees not to abandon any Intellectual Property or Intellectual Property License that is necessary in the conduct of such Grantor's business. Each Grantor hereby agrees to take the steps described in this Section 6(i)(ii) with respect to all new or acquired Intellectual Property to which it or any of its Subsidiaries is now or later becomes entitled that is necessary in the conduct of such Grantor's business.

(iii) Grantors acknowledge and agree that the Secured Parties shall have no duties with respect to any Intellectual Property or Licenses of any Grantor. Without limiting the generality of this Section 6(i)(iii), Grantors acknowledge and agree that no Secured Party shall be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Licenses against any other Person, but any Secured Party may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all expenses incurred in connection therewith (including reasonable and documented out-of-pocket fees and expenses of attorneys and other professionals) shall be for the sole account of Borrowers and shall be chargeable to the Loan Account.

(iv) Each Grantor shall promptly file an application with the United States Copyright Office for any Copyright that has not been registered with the United States Copyright Office if such Copyright is necessary in connection with the conduct of such Grantor's business. Any expenses incurred in connection with the foregoing shall be borne by the Grantors.

(v) On each date on which financial statements are delivered by Borrowers pursuant to Section 7.01 of the Credit Agreement, each Grantor shall provide the Administrative Agent with a written report of all new Patents or Trademarks that are registered or the subject of pending applications for registrations, and of all Licenses that are material to the conduct of such Grantor's business, in each case, which were acquired, registered, or for which applications for registration were filed by any Grantor during the prior period and any statement of use or amendment to allege use with respect to intent-to-use trademark applications. In the case of such registrations or applications therefor which were acquired by any Grantor, each such Grantor shall file the necessary documents with the appropriate Governmental Authority identifying the applicable Grantor as the owner (or as a co-owner thereof, if such is the case) of such Intellectual Property. In each of the foregoing cases, the applicable Grantor shall promptly cause to be prepared, executed, and delivered to the Administrative Agent on each date on which financial statements are delivered by Borrowers pursuant to Section 7.01 of the Credit Agreement supplemental schedules to the applicable Loan Documents to identify such Patent and Trademark registrations and applications therefor (with the exception of Trademark applications filed on an intent-to-use basis for which no statement of use or amendment to allege use has been filed) and Licenses as being subject to the security interests created thereunder.

(vi) Anything to the contrary in this Agreement notwithstanding, in no event shall any Grantor, either itself or through any agent, employee, licensee, or designee, file an application for the registration of any Copyright with the United States Copyright Office or any similar office or agency in another country without giving the Administrative Agent written notice thereof at least three (3) Business Days prior to such filing and complying with Section 6(i)(i). Upon receipt from the United States Copyright Office of notice of registration of any Copyright, each Grantor shall promptly (but in no event later than five (5) Business Days following such receipt) notify (but without duplication of any notice required by Section 6(i)(v)) the Administrative Agent of such registration by delivering, or causing to be delivered, to the Administrative Agent, documentation sufficient for the Administrative Agent to perfect the Administrative Agent's Liens on such Copyright. If any Grantor acquires from any Person any Copyright registered with the United States Copyright Office or an application to register any Copyright with the United States Copyright Office, such Grantor shall promptly (but in no event later than ten (10) Business Days following such acquisition) notify the Administrative Agent of such acquisition and deliver, or cause to be delivered, to the Administrative Agent, documentation sufficient for the Administrative Agent to perfect the Administrative Agent's Liens on such Copyright. In the case of such Copyright registrations or applications therefor which were acquired by any Grantor, each such Grantor shall promptly (but in no event later than ten (10) Business Days following such acquisition) file the necessary documents with the appropriate Governmental Authority identifying the applicable Grantor as the owner (or as a co-owner thereof, if such is the case) of such Copyrights.

(vii) Each Grantor shall take reasonable steps to maintain the confidentiality of, and otherwise protect and enforce its rights in, and the validity or enforceability of, the Intellectual Property that is necessary in the conduct of such Grantor's business, including, as applicable (A) maintaining and pursuing each such application for, and obtaining and maintain the registration of each such Patent, Trademark and Copyright (now or hereafter existing) (including, as applicable, by filing applications for renewal, affidavits of use, affidavits of noncontestability and initiating opposition and interference and cancellation proceedings against third parties), (B) protecting the secrecy and confidentiality of such confidential information and trade secrets by having and enforcing a policy requiring all current employees, consultants, licensees, vendors and contractors with access to such information to execute appropriate confidentiality agreements; (C) taking actions reasonably necessary to ensure that no such trade secret falls into the public domain; and (D) protecting the secrecy and confidentiality of the source code of all such software programs and applications of which it is the owner or licensee by having and enforcing a policy

requiring any licensees (or sublicensees) of such source code to enter into license agreements with commercially reasonable use and non-disclosure restrictions.

(viii) No Grantor shall enter into any Intellectual Property License to receive any license or rights in any Intellectual Property of any other Person unless such Grantor has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such Intellectual Property License (and all rights of Grantor thereunder) to the Administrative Agent (and any transferees thereof). In addition, at any time when an Event of Default exists and is continuing, following the written request of the Administrative Agent, each Grantor will (i) use its commercially reasonable efforts to obtain all consents and approvals necessary for the assignment for the benefit of the Administrative Agent of any License held by such Grantor in the United States to enable the Administrative Agent to lawfully enforce the security interests granted hereunder and (ii) to the extent required pursuant to any material License in the United States under which such Grantor is the licensee, deliver to the licensor thereunder any notice of the grant of security interest hereunder or such other notices required to be delivered thereunder in order to permit the security interest created or permitted to be created hereunder pursuant to the terms of such License.

(ix) Without limiting any of the foregoing, if any Grantor shall at any time after the Closing Date, obtain any ownership or licensee rights in, to or under any additional Intellectual Property constituting Collateral, then the provisions of this Agreement shall automatically apply thereto and any such Intellectual Property shall automatically be deemed Collateral and shall be subject to the security interest created by this Agreement, without further action by any party.

(j) Deposit, Commodities and Securities Accounts. Subject to the Post-Closing Agreement, on or prior to the date hereof, each Grantor shall cause each bank and other financial institution with an account referred to in Schedule VII hereto (other than Excluded Deposit Accounts) to execute and deliver to the Administrative Agent (or its designee) a Control Agreement, duly executed by such Grantor and such bank or financial institution, or enter into other arrangements in form and substance satisfactory to the Administrative Agent, pursuant to which such institution shall irrevocably agree, among other things, that (i) it will, subject to the Intercreditor Agreement or the applicable Control Agreement, comply at any time with the instructions originated by the Administrative Agent (or its designee) to such bank or financial institution directing the disposition of cash, Commodity Contracts, securities, Investment Property and other items from time to time credited to such account, without further consent of such Grantor, which instructions the Administrative Agent (or its designee) will not give to such bank or other financial institution in the absence of a continuing Event of Default, (ii) all cash, Commodity Contracts, securities, Investment Property and other items of such Grantor deposited with such institution shall be subject to a perfected, first priority security interest (subject to the Intercreditor Agreement) in favor of the Administrative Agent (or its designee), (iii) any right of set off, banker's Lien or other similar Lien, security interest or encumbrance shall be fully waived or subordinated as against the Administrative Agent (or its designee), and (iv) upon receipt of written notice from the Administrative Agent during the continuance of an Event of Default, subject to the Intercreditor Agreement or the applicable Control Agreement, such bank or financial institution shall immediately send to the Administrative Agent (or its designee) by wire transfer (to such account as the Administrative Agent (or its designee) shall specify, or in such other manner as the Administrative Agent (or its designee) shall direct) all such cash, the value of any Commodity Contracts, securities, Investment Property and other items held by it. Without the prior written consent of the Administrative Agent, no Grantor shall make or maintain any Deposit Account, Commodity Account or Securities Account except for the accounts set forth in Schedule VII hereto. The provisions of this Section 6(j) shall not apply to Excluded Deposit Accounts. Upon the occurrence and during the continuance of a Dominion Trigger Period, the Administrative Agent may (in its sole and absolute discretion) direct any or all of the banks and financial institutions party to a Control Agreement to send immediately to the Administrative Agent or its designated agent by wire transfer (to such account as the Administrative Agent shall specify, or in such other manner as the Administrative Agent shall direct) all or a portion of such securities, cash, investments and other items held by such institution. Subject to the Intercreditor Agreement, any such securities, cash, investments and other items so received by the Administrative Agent or its designated agent shall (in the sole and absolute discretion of the Administrative Agent) be held as additional Collateral for the Obligations. This Section 6(j) shall in no way limit the provisions of Section 4.04 of the Credit Agreement.

(k) Titled Collateral. As of the Closing Date, no Grantor owns any Titled Collateral, except as set forth on Schedule XII. If any Grantor shall at any time acquire any Titled Collateral after the Closing Date, such Grantor shall promptly notify the Administrative Agent thereof. At the request of the Administrative Agent, the Grantors shall (i) cause all Titled Collateral which under applicable law is required to be registered, to be properly registered in the name of such Grantor, (ii) cause all Titled Collateral, to be properly titled in the name of such Grantor, and if requested by the Administrative Agent, with the Administrative Agent's Lien noted thereon and (iii) if requested by the Administrative Agent and subject to the Intercreditor Agreement, promptly deliver to the Administrative Agent (or its

custodian) originals of all such Certificates of Title or certificates of ownership for such Titled Collateral, with the Administrative Agent's Lien noted thereon, and take such other actions as may be reasonably required by the Administrative Agent.

(l) Control. Each Grantor hereby agrees to take any or all action that may be necessary or that the Administrative Agent may request in order for the Administrative Agent to obtain control in accordance with the UCC with respect to the following Collateral: (i) Deposit Accounts and Securities Accounts, (ii) Electronic Chattel Paper, (iii) Investment Property and (iv) Letter-of-Credit Rights with a face value in excess of \$100,000 individually or in the aggregate. Each Grantor hereby acknowledges and agrees that any agent or designee of the Administrative Agent shall be deemed to be a "secured party" with respect to the Collateral under the control of such agent or designee for all purposes.

(m) Records; Inspection and Reporting.

(i) Each Grantor shall keep adequate records concerning the Accounts, Chattel Paper and Pledged Interests. Each Grantor shall permit the Administrative Agent, or any agents or representatives thereof or such professionals or other Persons as the Administrative Agent may designate, upon reasonable notice and during normal business hours, (A) to examine and make copies of and abstracts from such Grantor's books and records, (B) to visit and inspect such Grantor's properties, (C) to verify materials, leases, notes, Accounts, Inventory and other assets of such Grantor from time to time, (D) to conduct audits, physical counts, appraisals and/or valuations, Phase I and Phase II Environmental Site Assessments or examinations at the locations of such Grantor and (E) to discuss such Grantor's affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives, in each case as provided in and subject to the restrictions of the Credit Agreement, including, without limitation, Section 7.10 thereof.

(ii) Except as otherwise expressly permitted by Section 8.04 of the Credit Agreement, no Grantor shall, without the prior written consent of the Administrative Agent, change (A) its name, identity or organizational structure, (B) its jurisdiction of incorporation or organization as set forth in Schedule I hereto or (C) its chief executive office as set forth in Schedule VI hereto. Each Grantor shall promptly notify the Administrative Agent upon obtaining an organizational identification number, if on the date hereof such Grantor did not have such identification number.

(n) Partnership and Limited Liability Company Interest. Except with respect to partnership interests and membership interests evidenced by a certificate, which certificate has been pledged and, subject to the Intercreditor Agreement, delivered to the Administrative Agent pursuant to Section 4 hereof, no Grantor that is a partnership or a limited liability company shall, nor shall any Grantor with any Subsidiary that is a partnership or a limited liability company, permit such partnership interests or membership interests to (i) be dealt in or traded on securities exchanges or in securities markets, (ii) become a security for purposes of Article 8 of any relevant UCC, (iii) become an investment company security within the meaning of Section 8-103 of any relevant UCC or (iv) be evidenced by a certificate. Each Grantor agrees that such partnership interests or membership interests shall constitute General Intangibles.

Section 7 Voting Rights, Dividends, Etc. in Respect of the Pledged Interests.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) each Grantor may exercise any and all voting and other consensual rights pertaining to any Pledged Interests for any purpose not inconsistent with the terms of this Agreement, the Credit Agreement or the other Loan Documents; provided, however, that (A) each Grantor will give the Administrative Agent at least five (5) Business Days' notice of the manner in which it intends to exercise, or the reasons for refraining from exercising, any such right that could reasonably be expected to adversely affect in any material respect the value, liquidity or marketability of any Collateral or the creation, perfection and priority of the Administrative Agent's Lien; and (B) none of the Grantors will exercise or refrain from exercising any such right, as the case may be, if the Administrative Agent gives a Grantor notice that, in the Administrative Agent's judgment, such action (or inaction) could reasonably be expected to adversely affect in any material respect the value, liquidity or marketability of any Collateral or the creation, perfection and priority of the Administrative Agent's Lien; and

(ii) each of the Grantors may receive and retain any and all dividends, interest or other distributions paid in respect of the Pledged Interests to the extent permitted by the Credit Agreement; provided, however, that any and all (A) dividends and interest paid or payable other than in cash in respect of, and Instruments and other property received,

receivable or otherwise distributed in respect of or in exchange for, any Pledged Interests, (B) dividends and other distributions paid or payable in cash in respect of any Pledged Interests in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in surplus, and (C) cash paid, payable or otherwise distributed in redemption of, or in exchange for, any Pledged Interests, together with any dividend, interest or other distribution or payment which at the time of such payment was not permitted by the Credit Agreement, shall be, and shall forthwith be delivered to the Administrative Agent, to hold as, Pledged Interests and shall, if received by any of the Grantors, be received in trust for the benefit of the Administrative Agent and the Term Loan Agent, shall be segregated from the other property or funds of the Grantors, and shall be forthwith, subject to the Intercreditor Agreement, delivered to the Administrative Agent in the exact form received with any necessary indorsement and/or appropriate stock powers duly executed in blank, to be held by the Administrative Agent as Pledged Interests and as further collateral security for the Secured Obligations; and

(iii) the Administrative Agent will execute and deliver (or cause to be executed and delivered) to a Grantor all such proxies and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and other rights which it is entitled to exercise pursuant to Section 7(a)(i) hereof and to receive the dividends, interest and/or other distributions which it is authorized to receive and retain pursuant to Section 7(a)(ii) hereof.

(b) Subject to the Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default:

(i) all rights of each Grantor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to Section 7(a)(i) hereof, and to receive the dividends, distributions, interest and other payments that it would otherwise be authorized to receive and retain pursuant to Section 7(a)(ii) hereof, shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights and to receive and hold as Pledged Interests such dividends, distributions and interest payments;

(ii) the Administrative Agent is authorized to notify each debtor with respect to the Pledged Debt to make payment directly to the Administrative Agent (or its designee) and may collect any and all moneys due or to become due to any Grantor in respect of the Pledged Debt, and each of the Grantors hereby authorizes each such debtor to make such payment directly to the Administrative Agent (or its designee) without any duty of inquiry;

(iii) without limiting the generality of the foregoing, the Administrative Agent may at its option exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Pledged Interests as if it were the absolute owner thereof, including, without limitation, the right to exchange, in its discretion, any and all of the Pledged Interests upon the merger, consolidation, reorganization, recapitalization or other adjustment of any Pledged Issuer, or upon the exercise by any Pledged Issuer of any right, privilege or option pertaining to any Pledged Interests, and, in connection therewith, to deposit and deliver any and all of the Pledged Interests with any committee, depository, transfer agent, registrar or other designated agent upon such terms and conditions as it may determine; and

(iv) all dividends, distributions, interest and other payments that are received by any of the Grantors contrary to the provisions of Section 7(b)(i) hereof shall be received in trust for the benefit of the Administrative Agent, shall be segregated from other funds of the Grantors, and shall be forthwith paid over to the Administrative Agent as Pledged Interests in the exact form received with any necessary indorsement and/or appropriate stock powers duly executed in blank, to be held by the Administrative Agent as Pledged Interests and as further collateral security for the Secured Obligations.

Section 8 Additional Provisions Concerning the Collateral.

(a) Each of the Grantors shall use commercially reasonable efforts to cause to be delivered to the Administrative Agent a Lien Waiver with respect to (i) each bailee with which such Grantor keeps Inventory or other assets as of the Closing Date with a fair market value in excess of \$100,000 and (ii) to the extent required by the Administrative Agent, each landlord which leases real

property (and the accompanying facilities) to any of the Grantors as of the Closing Date. If any Grantor shall cause to be delivered Inventory or other personal property in excess of \$100,000 in fair market value to any bailee after the Closing Date, such Grantor shall use commercially reasonable efforts to cause such bailee to sign a Lien Waiver. Such requirement may be waived at the option of the Administrative Agent. If any Grantor shall lease any real property or facilities and the value of property of such Grantor located at such leased real property is in excess of \$100,000 in fair market value after the Closing Date, such Grantor shall use commercially reasonable efforts to cause the landlord in respect of such leased property or facilities to sign a Lien Waiver. Such requirement may be waived at the option of the Administrative Agent.

(b) To the maximum extent permitted by applicable law, and for the purpose of taking any action that the Administrative Agent may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, each Grantor hereby (i) authorizes the Administrative Agent to execute any such agreements, instruments or other documents in such Grantor's name and to file such agreements, instruments or other documents in such Grantor's name and in any appropriate filing office (including, without limitation, filings with the United States Patent and Trademark Office and the United States Copyright Office (including any Intellectual Property Security Agreements) for the purpose of perfecting, enforcing, maintaining or protecting the Lien of the Administrative Agent in United States issued, registered and applied for Patents, Trademarks and Copyrights (in each case, solely to the extent constituting Collateral), as applicable, and naming such Grantor as debtor and the Administrative Agent as secured party), (ii) authorizes the Administrative Agent at any time and from time to time to file, one or more financing or continuation statements and amendments thereto, relating to the Collateral (including, without limitation, any such financing statements that (A) describe the Collateral as "all assets" or "all personal property" (or words of similar effect) or that describe or identify the Collateral by type or in any other manner as the Administrative Agent may determine, regardless of whether any particular asset of such Grantor falls within the scope of Article 9 of the UCC or whether any particular asset of such Grantor constitutes part of the Collateral, and (B) contain any other information required by Part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including, without limitation, whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor) and (iii) ratifies such authorization to the extent that the Administrative Agent has filed any such financing statements, continuation statements, or amendments thereto, prior to the date hereof. A photocopy or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(c) Upon the occurrence and during the continuance of an Event of Default, in addition to all other rights and remedies available to the Administrative Agent under any other agreement, at law, in equity, or otherwise, and in all cases without any requirement that any notice be delivered to any Person (except as explicitly set forth in clause (vii) below), subject to the Intercreditor Agreement, (i) the Administrative Agent in its sole discretion shall have the right to obtain and adjust insurance required to be paid to the Administrative Agent pursuant to the Credit Agreement, (ii) the Administrative Agent in its sole discretion shall have the right to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any Collateral, (iii) the Administrative Agent in its sole discretion shall have the right to receive, endorse, and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (i) or (ii) above, (iv) the Administrative Agent shall have the sole and exclusive right to receive any and all dividends, payments or other Proceeds paid in respect of the Pledged Interests and other Investment Property and make application thereof to the Secured Obligations in the manner set forth in Section 9.03 of the Credit Agreement, (v) the Administrative Agent shall have the sole and exclusive right (but shall be under no obligation) to register any or all of the Pledged Interests and other Investment Property in the name of the Administrative Agent or its nominee, (vi) all rights of each Grantor to exercise or refrain from exercising the voting, corporate, consensual and other rights and privileges pertaining to the Pledged Interests and other Investment Property to which such Grantor would otherwise be entitled shall automatically cease and become vested in the Administrative Agent, (vii) upon concurrent notice to any Grantor, the Administrative Agent or its nominee shall have (except to the extent, if any, specifically waived in each instance by the Administrative Agent in writing in its sole discretion) the sole and exclusive right to exercise or refrain from exercising, but under no circumstances is the Administrative Agent obligated by the terms of this Agreement or otherwise to exercise, (x) all voting, corporate, consensual and other rights and privileges pertaining to the Pledged Interests and other Investment Property, whether at any meeting of shareholders (or members, partners or other comparable body, as applicable) of the relevant Pledged Issuer or Pledged Issuers, by written consent in lieu of a meeting or otherwise, and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to the Pledged Interests and other Investment Property as if it were the absolute owner thereof (including the right to exchange, at its discretion, any and all of the Pledged Interests or other Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate structure of any Pledged Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to the Pledged Interests or other Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Pledged Interests or other Investment Property with any committee, depository, transfer agent, registrar or other designated

agency upon such terms and conditions as the Administrative Agent may determine in its sole discretion), all without liability except to account for property actually received by the Administrative Agent, but the Administrative Agent shall have no duty to any Grantor or any other Person to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing, (viii) to file any claims or take any action or institute any proceedings which the Administrative Agent may deem necessary or desirable for the collection of any Collateral or otherwise to enforce the rights of the Administrative Agent and the Lenders with respect to any Collateral, (ix) the Administrative Agent in its sole discretion shall have the right to execute assignments, licenses and other documents to enforce the rights of the Administrative Agent and the Lenders with respect to any Collateral, (x) the Administrative Agent in its sole discretion shall have the right to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Administrative Agent in their respective sole discretion, and such payments made by the Administrative Agent to become Obligations of such Grantor, due and payable immediately without demand, (xi) the Administrative Agent in its sole discretion shall have the right to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts, Chattel Paper and other documents relating to the Collateral, (xii) the Administrative Agent in its sole discretion shall have the right to execute (to the extent necessary under applicable Law) on behalf of any Grantor any document (including any document required by the United States Trademark and Patent Office, the United States Copyright Office, or domain name registrar) to effect an assignment or sale of all right, title and interest in any of such Grantor's Intellectual Property constituting Collateral, and record the same and (xiii) the Administrative Agent in its sole discretion shall have the right to contact and enter into one or more agreements with the issuers of uncertificated securities that constitute Pledged Interests or with securities intermediaries holding Pledged Interests as may be necessary or advisable to give the Administrative Agent control over such Pledged Interests in accordance with the terms hereof. The Administrative Agent may exercise any such rights or privileges with respect to one or more of the Grantors at the same or different times, may waive any such rights or privileges in its sole discretion in part without suspending all such rights (as specified by the Administrative Agent in its sole discretion), and may temporarily waive any such rights or privileges in its sole discretion without waiving or otherwise affecting the Administrative Agent's right to exercise any such rights or privileges at any other time so long as an Event of Default has occurred and is continuing. Each Grantor hereby appoints the Administrative Agent as such Grantor's true and lawful attorney-in-fact, with full power of substitution, and grants to the Administrative Agent this IRREVOCABLE PROXY, to vote all or any part of the Pledged Interests and other Investment Property from time to time following the occurrence and during the continuance of an Event of Default, in each case in any manner the Administrative Agent deems advisable in its sole discretion for or against any or all matters submitted, or which may be submitted, to a vote of shareholders (including holders of any capital stock of any Pledged Issuer), partners or members, as the case may be, and to exercise all other rights, powers, privileges and remedies to which any such shareholders (including holders of any capital stock of any Pledged Issuer), partners or members would be entitled (including, without limitation, giving or withholding written consents of holders of capital stock of any Pledged Issuer, calling special meetings of the holders of the capital stock of any Pledged Issuer and voting at such meetings). The power-of-attorney and irrevocable proxy granted hereby are effective automatically upon the occurrence and during the continuance of an Event of Default without the necessity that any action (including, without limitation, that any transfer of any of the Pledged Interests or other Investment Property be recorded on the books and records of the relevant Pledged Issuer or that any of the Pledged Interests or other Investment Property be registered in the name of the Administrative Agent or any other Person) be taken by any Person (including the Pledged Issuer of the relevant Pledged Interests or other Investment Property or any officer or agent thereof), are coupled with an interest and shall be irrevocable, shall survive the bankruptcy, dissolution or winding up of each relevant Grantor, and shall terminate only upon the occurrence of Payment in Full.

(d) For the purpose of enabling the Administrative Agent to exercise rights and remedies hereunder, at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby (i) grants to the Administrative Agent an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, assign, license or sublicense any Intellectual Property now or hereafter owned by any Grantor, wherever the same may be located, including in such license (exercisable without payment of royalty or other compensation to any Grantor) 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; and (ii) assigns to the Administrative Agent, to the extent assignable, all of its rights to any Intellectual Property now or hereafter licensed or used by any Grantor. In connection with the foregoing, each Grantor hereby irrevocably agrees that, at any time and from time to time following the occurrence and during the continuance of an Event of Default, the Administrative Agent may exercise its rights and remedies hereunder with respect to any Grantor's Intellectual Property constituting Collateral and sell any Grantor's Inventory directly to any Person, including without limitation Persons who have previously purchased any Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Administrative Agent's rights under this Agreement, may (subject to any restrictions contained in applicable third party licenses entered into by a Grantor) sell Inventory which bears any Trademark owned by or licensed to any Grantor and any Inventory that is covered by any Intellectual Property owned by or licensed to such Grantor and the

Administrative Agent may finish any work in process and affix any relevant Trademark owned by or licensed to any Grantor and sell such Inventory as provided herein. The exercise of rights and remedies hereunder by the Administrative Agent shall not terminate the rights of the holders of any licenses or sublicenses theretofore granted by any Grantor in accordance with the second sentence of this clause (d). Each Grantor hereby releases the Administrative Agent from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the Administrative Agent under the powers of attorney granted herein other than actions taken or omitted to be taken through the Administrative Agent's gross negligence or willful misconduct, as determined by a final determination of a court of competent jurisdiction.

(e) If any Grantor fails to perform any agreement or obligation contained herein, the Administrative Agent may itself perform, or cause performance of, such agreement or obligation, in the name of such Grantor or the Administrative Agent, and the expenses of the Administrative Agent incurred in connection therewith shall be jointly and severally payable by the Grantors pursuant to Section 10 hereof and shall be secured by the Collateral.

(f) The powers conferred on the Administrative Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Other than the exercise of reasonable care to assure the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Administrative Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral and shall be relieved of all responsibility for any Collateral in its possession upon surrendering it or tendering surrender of it to any of the Grantors (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct). The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Administrative Agent accords its own property, it being understood that the Administrative Agent shall not have responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Administrative Agent has or is deemed to have knowledge of such matters. The Administrative Agent shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by the Administrative Agent in good faith.

(g) Anything herein to the contrary notwithstanding (i) each Grantor shall remain liable under the Licenses and otherwise in respect of the Collateral to the extent set forth therein to perform all of its obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Administrative Agent of any of its rights hereunder shall not release any Grantor from any of its obligations under the Licenses or otherwise in respect of the Collateral, and (iii) the Administrative Agent shall not have any obligation or liability by reason of this Agreement under the Licenses or otherwise in respect of the Collateral, nor shall the Administrative Agent be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(h) The Administrative Agent may at any time in its discretion at any time an Event of Default has occurred and is continuing, subject to the Intercreditor Agreement, (i) without notice to any Grantor, transfer or register in the name of the Administrative Agent or any of its nominees any or all of the Pledged Interests, subject only to the revocable rights of such Grantor under Section 7(a) hereof, and (ii) exchange certificates or Instruments constituting Pledged Interests for certificates or Instruments of smaller or larger denominations.

(i) Without limiting any rights the Administrative Agent or any other Secured Party may otherwise have under applicable law or by agreement, in the event of any liquidation of the Collateral (or any other exercise of remedies by the Administrative Agent, including under this Section 8), the Administrative Agent or any other Person (including any Grantor) acting with the consent, or on behalf, of the Administrative Agent, shall have the right to use properties and assets of the Grantors that do not constitute Collateral, each of the foregoing in order to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, complete a production run of Inventory involving, take possession of, move, prepare and advertise for sale, sell (by public auction, private sale or a "store closing", "going out of business" or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in the any Grantor's business), store or otherwise deal with the Collateral, in each case without notice to, the involvement of or interference by or liability to any Grantor or any of their creditors. The Administrative Agent shall not be obligated to pay any amounts for or in respect of the use by the Administrative Agent or any other Person (including any Grantor) acting with the consent, or on behalf, of the Administrative Agent, of any properties and assets of the Grantors pursuant to this Section 8(i).

Section 9 Remedies Upon Default. If any Event of Default shall have occurred and be continuing:

(a) The Administrative Agent may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein or otherwise available to it, all of the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Administrative Agent's name or into the name of its nominee or nominees (to the extent the Administrative Agent has not theretofore done so) and thereafter receive, for the benefit of the Administrative Agent and the Lenders, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Administrative Agent forthwith, assemble all or part of the Collateral as directed by the Administrative Agent and make it available to the Administrative Agent at a place or places to be designated by the Administrative Agent that is reasonably convenient to both parties, and the Administrative Agent may enter into and occupy any premises owned or leased by any Grantor where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Administrative Agent's rights and remedies hereunder or under law, without obligation to any Grantor in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Administrative Agent's offices, at any exchange or broker's board or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Administrative Agent may reasonably deem commercially reasonable and/or (B) lease, license or otherwise dispose of the Collateral or any part thereof upon such terms as the Administrative Agent may reasonably deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale or any other disposition of the Collateral shall be required by law, at least ten (10) days' prior notice to the applicable Grantor of the time and place of any public sale or the time after which any private sale or other disposition of the Collateral is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale or other disposition of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Administrative Agent and the Lenders arising by reason of the fact that the price at which the Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Administrative Agent accepts the first offer received and does not offer the Collateral to more than one offeree, and waives all rights that such Grantor may have to require that all or any part of the Collateral be marshaled upon any sale (public or private) thereof. Each Grantor hereby acknowledges that (i) any such sale of the Collateral by the Administrative Agent shall be made without warranty, (ii) the Administrative Agent may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, (iii) the Administrative Agent may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness), if permitted by law, for the purchase, lease, license or other disposition of the Collateral or any portion thereof for the account of the Administrative Agent (on behalf of itself and the Lenders) and (iv) such actions set forth in clauses (i), (ii) and (iii) above shall not adversely affect the commercial reasonableness of any such sale of the Collateral. In addition to the foregoing, (i) upon written notice to any Grantor from the Administrative Agent, each Grantor shall cease any use of the Intellectual Property or any trademark, patent or copyright similar thereto for any purpose described in such notice; (ii) the Administrative Agent may, at any time and from time to time, upon ten (10) days' prior notice to any Grantor, license, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any of the Intellectual Property, throughout the universe for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its reasonable discretion determine; and (iii) the Administrative Agent may, at any time, pursuant to the authority granted in Section 8 hereof (such authority being effective upon the occurrence and during the continuance of an Event of Default), execute and deliver on behalf of a Grantor, one or more instruments of assignment of the Intellectual Property (or any application or registration thereof), in form suitable for filing, recording or registration in any country.

(b) Each Grantor recognizes that the Administrative Agent may deem it impracticable to effect a public sale of all or any part of the Pledged Shares or any other securities constituting Pledged Interests and that the Administrative Agent may, therefore, determine to make one or more private sales of any such securities to a restricted group of purchasers who will be obligated to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale

thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable to the seller than the prices and other terms which might have been obtained at a public sale and, notwithstanding the foregoing, agrees that such private sales shall be deemed to have been made in a commercially reasonable manner and that the Administrative Agent shall have no obligation to delay the sale of any such securities for the period of time necessary to permit the issuer of such securities to register such securities for public sale under the Securities Act. Each Grantor further acknowledges and agrees that any offer to sell such securities which has been (i) publicly advertised on a bona fide basis in a newspaper or other publication of general circulation in the financial community of New York, New York (to the extent that such an offer may be so advertised without prior registration under the Securities Act) or (ii) made privately in the manner described above to not less than fifteen bona fide offerees shall be deemed to involve a “public disposition” for the purposes of Section 9-610(c) of the UCC (or any successor or similar, applicable statutory provision) as then in effect in the State of New York, notwithstanding that such sale may not constitute a “public offering” under the Securities Act, and that the Administrative Agent may, in such event, bid for the purchase of such securities.

(c) Any cash held by the Administrative Agent (or its agent or designee) as Collateral and all Cash Proceeds received by the Administrative Agent (or its agent or designee) in respect of any sale of or collection from, or other realization upon, all or any part of the Collateral may, in the discretion of the Administrative Agent, be held by the Administrative Agent (or its agent or designee) as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Administrative Agent pursuant to Section 10 hereof) in whole or in part by the Administrative Agent against, all or any part of the Secured Obligations in such order as the Administrative Agent shall elect, consistent with the provisions of the Credit Agreement and the Intercreditor Agreement. Any surplus of such cash or Cash Proceeds held by the Administrative Agent (or its agent or designee) and remaining after Payment in Full, shall be paid over to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(d) In the event that the proceeds of any such sale, collection or realization are insufficient to pay all amounts to which the Administrative Agent and the Lenders are legally entitled, the Grantors shall be jointly and severally liable for the deficiency, together with interest thereon at the highest rate specified in any applicable Loan Document for interest on overdue principal thereof or such other rate as shall be fixed by applicable law, together with the costs of collection and the reasonable out-of-pocket fees, costs, expenses and other client charges of any attorneys employed by the Administrative Agent to collect such deficiency.

(e) Each Grantor hereby acknowledges that if the Administrative Agent complies with any applicable requirements of law in connection with a disposition of the Collateral, such compliance will not adversely affect the commercial reasonableness of any sale or other disposition of the Collateral.

(f) The Administrative Agent shall not be required to marshal any present or future collateral security (including, but not limited to, this Agreement and the Collateral) for, or other assurances of payment of, the Secured Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the Administrative Agent's rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that any Grantor lawfully may, such Grantor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Administrative Agent's rights under this Agreement or under any other instrument creating or evidencing any of the Secured Obligations or under which any of the Secured Obligations is outstanding or by which any of the Secured Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Grantor hereby irrevocably waives the benefits of all such laws.

(g) The Grantors irrevocably and unconditionally:

(i) consent to the appointment of pre-judgment and/or post-judgment receivers with all of the same powers that would otherwise be available to the Grantors, including, but not limited to the power to (A) hold, manage, control or dispose of the Collateral wherever located, (B) take any action with respect to the Collateral to the maximum extent permitted by law and (C) conduct a public or private sale of any or all of the Secured Parties' right, title and interest in and to such Collateral, including any disposition of the Collateral to the Administrative Agent in exchange for cancellation of all or a portion of the Obligations;

(ii) consent that any such receiver can be appointed without a hearing or prior notice to the Grantors;

(iii) agrees not to oppose or otherwise interfere (directly or indirectly) with any effort by Administrative Agent to seek the appointment of a receiver;

(iv) waives any right to demand that a bond be posted in connection with the appointment of any such receiver;
and

(v) waives any right to appeal the entry of an order authorizing the appointment of a receiver.

Section 10 Indemnity and Expenses. Each Grantor agrees that the Administrative Agent shall be entitled to reimbursement of expenses pursuant to Section 11.04 of the Credit Agreement, which is incorporated herein, *mutatis mutandis*, as if a part hereof, with each reference to the “Borrowers” or “Loan Parties” deemed to be a reference to the Grantors. The obligations in this Section 10 shall survive repayment of the Obligations.

Section 11 Notices, Etc. All notices and other communications provided for hereunder shall be given in accordance with the notice provision of the Credit Agreement.

Section 12 Security Interest Absolute; Joint and Several Obligations.

(a) All rights of the Secured Parties, all Liens and all obligations of each of the Grantors hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Credit Agreement or any other Loan Document, (ii) any change in the time, manner or place of payment of, or in any other term in respect of, all or any of the Secured Obligations, or any other amendment or waiver of or consent to any departure from the Credit Agreement or any other Loan Document, (iii) any exchange or release of, or non-perfection of any Lien on any Collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Secured Obligations, or (iv) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any of the Grantors in respect of the Secured Obligations other than Payment in Full. All authorizations and agencies contained herein with respect to any of the Collateral are irrevocable and powers coupled with an interest.

(b) Each Grantor hereby waives, to the extent permitted by applicable law, (i) promptness and diligence, (ii) notice of acceptance and notice of the incurrence of any Obligation by any of the Borrowers, (iii) notice of any actions taken by the Administrative Agent, any Lender, any Guarantor or any other Person under any Loan Document or any other agreement, document or instrument relating thereto, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this subsection (b), might constitute grounds for relieving such Grantor of any such Grantor’s obligations hereunder and (v) any requirement that the Administrative Agent or any Lender protect, secure, perfect or insure any security interest or other lien on any property subject thereto or exhaust any right or take any action against any Grantor or any other Person or any collateral.

(c) All of the obligations of the Grantors hereunder are joint and several. The Administrative Agent may, in its sole and absolute discretion, enforce the provisions hereof against any of the Grantors and shall not be required to proceed against all Grantors jointly or seek payment from the Grantors ratably. In addition, the Administrative Agent may, in its sole and absolute discretion, select the Collateral of any one or more of the Grantors for sale or application to the Secured Obligations, without regard to the ownership of such Collateral, and shall not be required to make such selection ratably from the Collateral owned by all of the Grantors. The release or discharge of any Grantor by the Administrative Agent shall not release or discharge any other Grantor from the obligations of such Person hereunder.

Section 13 Miscellaneous.

(a) No amendment of any provision of this Agreement (including any Schedule attached hereto) shall be effective unless it is in writing and signed by each Grantor affected thereby and the Administrative Agent, and no waiver of any provision of

this Agreement, and no consent to any departure by any Grantor therefrom, shall be effective unless it is in writing and signed by the Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of the Secured Parties 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 such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Secured Parties 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 Secured Parties under any Loan Document against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights under any other Loan Document against such party or against any other Person, including but not limited to, any Grantor.

(c) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect, subject to paragraph (e) below, until Payment in Full and (ii) be binding on each Grantor all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the UCC, and shall inure, together with all rights and remedies of the Secured Parties hereunder, to the benefit of the Secured Parties and their respective successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, the Secured Parties may assign or otherwise transfer their respective rights and obligations under this Agreement and any other Loan Document to any other Person pursuant to the terms of the Credit Agreement, and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Secured Parties herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to any Secured Party shall mean the assignee of any such Secured Party. None of the rights or obligations of any Grantor hereunder may be assigned or otherwise transferred without the prior written consent of the Administrative Agent, and any such assignment or transfer shall be null and void.

(d) Upon the occurrence of Payment in Full, (i) subject to paragraph (e) below, this Agreement and the security interests and licenses created hereby shall terminate and all rights to the Collateral shall revert to the Grantors and (ii) the Administrative Agent will, upon the Grantors' request and at the Grantors' expense, without any representation, warranty or recourse whatsoever, (A) return to the Grantors (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct) such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof and (B) execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

(e) This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment or performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(f) Upon the execution and delivery, or authentication, by any Person of a security agreement supplement in substantially the form of Exhibit C hereto (each a "**Security Agreement Supplement**"), (i) such Person shall be referred to as an "**Additional Grantor**" and shall be and become a Grantor, and each reference in this Agreement to "Grantor" shall also mean and be a reference to such Additional Grantor, and each reference in this Agreement and the other Loan Documents to "Collateral" shall also mean and be a reference to the Collateral of such Additional Grantor, and (ii) the supplemental Schedules I-XI attached to each Security Agreement Supplement shall be incorporated into and become a part of and supplement Schedules I-XI, respectively, hereto, and the Administrative Agent may attach such Schedules as supplements to such Schedules, and each reference to such Schedules shall mean and be a reference to such Schedules, as supplemented pursuant hereto.

(g) THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT THE VALIDITY AND PERFECTION OR THE PERFECTION AND THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTEREST CREATED

HEREBY, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

(h) EACH GRANTOR HEREBY IRREVOCABLY CONSENTS TO AND WAIVES ANY RIGHT TO OBJECT TO OR OTHERWISE CONTEST THE APPOINTMENT OF A RECEIVER AFTER THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT. EACH GRANTOR (i) GRANTS SUCH WAIVER AND CONSENTS KNOWINGLY AFTER HAVING DISCUSSED THE IMPLICATIONS THEREOF WITH COUNSEL, (ii) ACKNOWLEDGES THAT (A) THE UNCONTESTED RIGHT TO HAVE A RECEIVER APPOINTED FOR THE FOREGOING PURPOSES IS CONSIDERED ESSENTIAL BY THE ADMINISTRATIVE AGENT AND THE LENDERS IN CONNECTION WITH THE ENFORCEMENT OF THEIR RIGHTS AND REMEDIES HEREUNDER AND UNDER THE OTHER DOCUMENTS EXECUTED IN CONNECTION HERewith, AND (B) THE AVAILABILITY OF SUCH APPOINTMENT AS A REMEDY UNDER THE FOREGOING CIRCUMSTANCES WAS A MATERIAL FACTOR IN INDUCING THE ADMINISTRATIVE AGENT AND LENDERS TO MAKE (AND COMMIT TO MAKE) THE LOANS TO THE BORROWERS, AND (iii) AGREES TO ENTER INTO ANY AND ALL STIPULATIONS IN ANY LEGAL ACTIONS, OR AGREEMENTS OR OTHER INSTRUMENTS IN CONNECTION WITH THE FOREGOING AND TO COOPERATE FULLY WITH THE ADMINISTRATIVE AGENT OR LENDERS IN CONNECTION WITH THE ASSUMPTION AND EXERCISE OF CONTROL BY THE RECEIVER OVER ALL OR ANY PORTION OF THE COLLATERAL.

(i) In addition to and without limitation of any of the foregoing, this Agreement shall be deemed to be a Loan Document and shall otherwise be subject to all of the terms and conditions contained in Sections 11.14, 11.15 and 11.16 of the Credit Agreement, *mutatis mutandis*.

(j) Each Grantor and the Administrative Agent irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding with respect to this Agreement any special, exemplary, punitive or consequential damages.

(k) 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 thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(l) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(m) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart.

Section 14 Intercreditor Agreement.

(a) Notwithstanding any other provision contained herein, this Agreement is subject in all respects to the provisions of the Intercreditor Agreement, including without limitation, the Liens created hereby and the exercise of any rights, remedies, duties or obligations provided for herein or the application of proceeds (including insurance and condemnation proceeds) of any Collateral.

(b) Notwithstanding anything herein to the contrary, with respect to the Term Priority Collateral, until the Discharge of the Term Obligations (as defined in the Intercreditor Agreement), any obligation of any Grantor hereunder or under any other Collateral Document with respect to the delivery of any Term Priority Collateral shall be deemed to be satisfied if such Grantor complies with the requirements of the similar provision of the Term Collateral Documents (as defined in the Intercreditor Agreement).

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each Grantor and the Administrative Agent has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTORS:

PURPLE INNOVATION, LLC

By: Purple Innovation, Inc., its Manager

By: /s/ Bennett Nussbaum

Name: Bennett Nussbaum

Title: Chief Financial Officer and Treasurer

PURPLE INNOVATION, INC.

By: /s/ Bennett Nussbaum

Name: Bennett Nussbaum

Title: Chief Financial Officer and Treasurer

INTELLIBED, LLC

By: /s/ Casey K. McGarvey

Name: Casey K. McGarvey

Title: President, Treasurer and Secretary

ADMINISTRATIVE AGENT:

BANK OF MONTREAL,
as Administrative Agent

By: /s/ Kara Goodwin

Name: Kara Goodwin

Title: Managing Director

CERTIFICATIONS

I, Robert T. DeMartini, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Purple Innovation, Inc.;

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

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

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

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

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

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

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

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

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

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

Dated: August 9, 2023

/s/ Robert T. DeMartini

Robert T. DeMartini, Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Bennett L. Nussbaum, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Purple Innovation, Inc.;

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

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

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

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

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

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

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

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

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

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

Dated: August 9, 2023

/s/ Bennett L. Nussbaum

Bennett L. Nussbaum, Interim Chief Financial Officer
(Principal Financial Officer)

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Purple Innovation, Inc. (the “Corporation”) for the quarter ended June 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Robert T. DeMartini, Chief Executive Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

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

Dated: August 9, 2023

/s/ Robert T. DeMartini

Robert T. DeMartini, Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Purple Innovation, Inc. (the “Corporation”) for the quarter ended June 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Bennett L. Nussbaum, Interim Chief Financial Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

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

Dated: August 9, 2023

/s/ Bennett L. Nussbaum

Bennett L. Nussbaum, Interim Chief Financial Officer
(Principal Financial Officer)

**Document And Entity
Information - shares**

**6 Months Ended
Jun. 30, 2023**

Aug. 08, 2023

Document Information [Line Items]

<u>Entity Registrant Name</u>	PURPLE INNOVATION, INC.
<u>Trading Symbol</u>	PRPL
<u>Document Type</u>	10-Q
<u>Current Fiscal Year End Date</u>	--12-31
<u>Amendment Flag</u>	false
<u>Entity Central Index Key</u>	0001643953
<u>Entity Current Reporting Status</u>	Yes
<u>Entity Filer Category</u>	Accelerated Filer
<u>Document Period End Date</u>	Jun. 30, 2023
<u>Document Fiscal Year Focus</u>	2023
<u>Document Fiscal Period Focus</u>	Q2
<u>Entity Small Business</u>	true
<u>Entity Emerging Growth Company</u>	false
<u>Entity Shell Company</u>	false
<u>Document Quarterly Report</u>	true
<u>Document Transition Report</u>	false
<u>Entity File Number</u>	001-37523
<u>Entity Incorporation, State or Country Code</u>	DE
<u>Entity Tax Identification Number</u>	47-4078206
<u>Entity Address, Address Line One</u>	4100 NORTH CHAPEL RIDGE ROAD
<u>Entity Address, Address Line Two</u>	SUITE 200
<u>Entity Address, City or Town</u>	LEHI
<u>Entity Address, State or Province</u>	UT
<u>Entity Address, Postal Zip Code</u>	84043
<u>City Area Code</u>	(801)
<u>Local Phone Number</u>	756-2600
<u>Title of 12(b) Security</u>	Class A Common Stock, par value \$0.0001 per share
<u>Security Exchange Name</u>	NASDAQ
<u>Entity Interactive Data Current</u>	Yes
<u>Class A Common Stock</u>	

Document Information [Line Items]

<u>Entity Common Stock, Shares Outstanding</u>	105,322,607
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Class B Common Stock

Document Information [Line Items]

<u>Entity Common Stock, Shares Outstanding</u>	428,280
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Cover**6 Months Ended
Jun. 30, 2023****Document Information [Line Items]**

<u>Document Type</u>	10-Q
<u>Document Quarterly Report</u>	true
<u>Document Transition Report</u>	false
<u>Entity Interactive Data Current</u>	Yes
<u>Amendment Flag</u>	false
<u>Document Period End Date</u>	Jun. 30, 2023
<u>Document Fiscal Year Focus</u>	2023
<u>Document Fiscal Period Focus</u>	Q2

Entity Information [Line Items]

<u>Entity Registrant Name</u>	PURPLE INNOVATION, INC.
<u>Entity Central Index Key</u>	0001643953
<u>Entity File Number</u>	001-37523
<u>Entity Tax Identification Number</u>	47-4078206
<u>Entity Incorporation, State or Country Code</u>	DE
<u>Current Fiscal Year End Date</u>	--12-31
<u>Entity Current Reporting Status</u>	Yes
<u>Entity Shell Company</u>	false
<u>Entity Filer Category</u>	Accelerated Filer
<u>Entity Small Business</u>	true
<u>Entity Emerging Growth Company</u>	false

Entity Contact Personnel [Line Items]

<u>Entity Address, Address Line One</u>	4100 NORTH CHAPEL RIDGE ROAD
<u>Entity Address, Address Line Two</u>	SUITE 200
<u>Entity Address, City or Town</u>	LEHI
<u>Entity Address, State or Province</u>	UT
<u>Entity Address, Postal Zip Code</u>	84043

Entity Phone Fax Numbers [Line Items]

<u>City Area Code</u>	(801)
<u>Local Phone Number</u>	756-2600

Entity Listings [Line Items]

<u>Title of 12(b) Security</u>	Class A Common Stock, par value \$0.0001 per share
<u>Trading Symbol</u>	PRPL
<u>Security Exchange Name</u>	NASDAQ

**Condensed Consolidated
Balance Sheets (Unaudited) -
USD (\$)
\$ in Thousands**

**Jun. 30, Dec. 31,
2023 2022**

Current assets:

<u>Cash, cash equivalents and restricted cash</u>	\$ 26,949	\$ 41,754
<u>Accounts receivable, net</u>	22,769	34,566
<u>Inventories, net</u>	78,402	73,197
<u>Prepaid expenses</u>	5,669	7,821
<u>Other current assets</u>	3,881	4,117
<u>Total current assets</u>	137,670	161,455
<u>Property and equipment, net</u>	131,493	136,673
<u>Operating lease right-of-use assets</u>	99,858	102,541
<u>Goodwill</u>	5,021	4,897
<u>Intangible assets, net</u>	23,688	26,221
<u>Other long-term assets</u>	2,958	1,546
<u>Total assets</u>	400,688	433,333

Current liabilities:

<u>Accounts payable</u>	48,742	46,441
<u>Accrued sales returns</u>	4,197	5,107
<u>Accrued compensation</u>	4,190	6,691
<u>Customer prepayments</u>	5,477	4,452
<u>Accrued sales and use tax</u>	1,674	2,978
<u>Accrued rebates and allowances</u>	5,827	9,804
<u>Operating lease obligations – current portion</u>	14,390	13,708
<u>Other current liabilities</u>	7,359	8,130
<u>Total current liabilities</u>	91,856	97,311
<u>Debt</u>		23,657
<u>Operating lease obligations, net of current portion</u>	113,549	115,599
<u>Other long-term liabilities, net of current portion</u>	17,717	17,876
<u>Total liabilities</u>	223,122	254,443

Commitments and contingencies (Note 14)

Stockholders' equity:

<u>Class A common stock; \$0.0001 par value, 210,000 shares authorized; 105,323 issued and outstanding at June 30, 2023 and 91,380 issued and outstanding at December 31, 2022</u>	11	9
<u>Class B common stock; \$0.0001 par value, 90,000 shares authorized; 428 issued and outstanding at June 30, 2023 and 448 issued and outstanding at December 31, 2022</u>		
<u>Additional paid-in capital</u>	589,145	529,466
<u>Accumulated deficit</u>	(412,323)	(351,514)
<u>Total stockholders' equity attributable to Purple Innovation, Inc.</u>	176,833	177,961
<u>Noncontrolling interest</u>	733	929
<u>Total stockholders' equity</u>	177,566	178,890
<u>Total liabilities and stockholders' equity</u>	\$	\$
	400,688	433,333

**Condensed Consolidated
Balance Sheets (Unaudited)
(Parentheticals) - \$ / shares
shares in Thousands**

Jun. 30, 2023 Dec. 31, 2022

Class A Common stock

<u>Common stock, par value (in Dollars per share)</u>	\$ 0.0001	\$ 0.0001
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<u>Common stock, shares authorized</u>	210,000	210,000
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<u>Common stock, shares issued</u>	105,323	91,380
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<u>Common stock, shares outstanding</u>	105,323	91,380
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Class B Common stock

<u>Common stock, par value (in Dollars per share)</u>	\$ 0.0001	\$ 0.0001
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<u>Common stock, shares authorized</u>	90,000	90,000
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<u>Common stock, shares issued</u>	428	448
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<u>Common stock, shares outstanding</u>	428	448
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Condensed Consolidated Statements of Operations (Unaudited) - USD (\$) \$ in Thousands	3 Months Ended		6 Months Ended	
	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023	Jun. 30, 2022
<u>Income Statement [Abstract]</u>				
<u>Revenues, net</u>	\$ 120,872	\$ 144,109	\$ 230,244	\$ 287,288
<u>Cost of revenues</u>	82,408	95,297	148,557	186,850
<u>Gross profit</u>	38,464	48,812	81,687	100,438
<u>Operating expenses:</u>				
<u>Marketing and sales</u>	46,379	40,373	84,552	90,332
<u>General and administrative</u>	26,437	18,779	50,104	36,667
<u>Research and development</u>	2,925	1,748	6,297	3,891
<u>Total operating expenses</u>	75,741	60,900	140,953	130,890
<u>Operating loss</u>	(37,277)	(12,088)	(59,266)	(30,452)
<u>Other income (expense):</u>				
<u>Interest expense</u>	(352)	(707)	(554)	(1,730)
<u>Other income (expense), net</u>	37	(136)	110	(119)
<u>Change in fair value – warrant liabilities</u>		346		4,274
<u>Loss on extinguishment of debt</u>			(1,217)	
<u>Total other income (expense), net</u>	(315)	(497)	(1,661)	2,425
<u>Net loss before income taxes</u>	(37,592)	(12,585)	(60,927)	(28,027)
<u>Income tax benefit (expense)</u>	(72)	4,175	(144)	5,986
<u>Net loss</u>	(37,664)	(8,410)	(61,071)	(22,041)
<u>Net loss attributable to noncontrolling interest</u>	(155)	(70)	(262)	(199)
<u>Net loss attributable to Purple Innovation, Inc.</u>	\$ (37,509)	\$ (8,340)	\$ (60,809)	\$ (21,842)
<u>Net loss per share:</u>				
<u>Basic (in Dollars per share)</u>	\$ (0.36)	\$ (0.1)	\$ (0.6)	\$ (0.29)
<u>Diluted (in Dollars per share)</u>	\$ (0.36)	\$ (0.1)	\$ (0.6)	\$ (0.29)
<u>Weighted average common shares outstanding:</u>				
<u>Basic (in Shares)</u>	105,079	82,703	101,760	74,924
<u>Diluted (in Shares)</u>	105,079	83,151	101,760	75,372

Condensed Consolidated Statements of Stockholders' Equity (Unaudited) - USD (\$) shares in Thousands, \$ in Thousands							
	Class A Common Stock	Class B Common Stock	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity	Noncontrolling Interest	Total
Balance at Dec. 31, 2021	\$ 7		\$ 407,591	\$ (261,825)	\$ 145,773	\$ 768	\$ 146,541
Balance (in Shares) at Dec. 31, 2021	66,493	448					
Net loss				(13,502)	(13,502)	(129)	(13,631)
Stock-based compensation			542		542		542
Exercise of stock options			166		166		166
Exercise of stock options (in Shares)	20						
Issuance of common stock under equity compensation plans							
Issuance of common stock under equity compensation plans (in Shares)	25						
Issuance of stock upon underwritten public offering, net of costs	\$ 1		92,894		92,895		92,895
Issuance of stock upon underwritten public offering, net of costs (in Shares)	16,100						
Accrued distributions			(228)		(228)		(228)
Impact of transactions affecting NCI			(141)		(141)	141	
Balance at Mar. 31, 2022	\$ 8		500,824	(275,327)	225,505	780	226,285
Balance (in Shares) at Mar. 31, 2022	82,638	448					
Balance at Dec. 31, 2021	\$ 7		407,591	(261,825)	145,773	768	146,541
Balance (in Shares) at Dec. 31, 2021	66,493	448					
Net loss							(22,041)
Balance at Jun. 30, 2022	\$ 8		501,997	(283,667)	218,338	783	219,121
Balance (in Shares) at Jun. 30, 2022	82,764	448					
Balance at Mar. 31, 2022	\$ 8		500,824	(275,327)	225,505	780	226,285
Balance (in Shares) at Mar. 31, 2022	82,638	448					
Net loss				(8,340)	(8,340)	(70)	(8,410)
Stock-based compensation			1,275		1,275		1,275

Additional costs associated with underwritten public stock offering		(29)		(29)		(29)
Issuance of common stock under equity compensation plans						
Issuance of common stock under equity compensation plans (in Shares)	126					
Impact of transactions affecting NCI		(73)		(73)	73	
Balance at Jun. 30, 2022	\$ 8	501,997	(283,667)	218,338	783	219,121
Balance (in Shares) at Jun. 30, 2022	82,764 448					
Balance at Dec. 31, 2022	\$ 9	529,466	(351,514)	177,961	929	178,890
Balance (in Shares) at Dec. 31, 2022	91,380 448					
Net loss			(23,300)	(23,300)	(107)	(23,407)
Stock-based compensation		1,192		1,192		1,192
Issuance of common stock under equity compensation plans						
Issuance of common stock under equity compensation plans (in Shares)	265					
Issuance of stock upon underwritten public offering, net of costs	\$ 2	57,198		57,200		57,200
Issuance of stock upon underwritten public offering, net of costs (in Shares)	13,400					
Impact of transactions affecting NCI		(103)		(103)	103	
Balance at Mar. 31, 2023	\$ 11	587,753	(374,814)	212,950	925	213,875
Balance (in Shares) at Mar. 31, 2023	105,045 448					
Balance at Dec. 31, 2022	\$ 9	529,466	(351,514)	177,961	929	178,890
Balance (in Shares) at Dec. 31, 2022	91,380 448					
Net loss						(61,071)
Balance at Jun. 30, 2023	\$ 11	589,145	(412,323)	176,833	733	177,566
Balance (in Shares) at Jun. 30, 2023	105,323 428					
Balance at Mar. 31, 2023	\$ 11	587,753	(374,814)	212,950	925	213,875
Balance (in Shares) at Mar. 31, 2023	105,045 448					
Net loss			(37,509)	(37,509)	(155)	(37,664)
Stock-based compensation		1,661		1,661		1,661

Exchange of stock						
Exchange of stock (in Shares)	20	(20)				
Proportional Representation Preferred Linked Stock redemption fee		(105)		(105)		(105)
Additional costs associated with underwritten public stock offering		(201)		(201)		(201)
Issuance of common stock under equity compensation plans						
Issuance of common stock under equity compensation plans (in Shares)	258					
Impact of transactions affecting NCI		37		37	(37)	
Balance at Jun. 30, 2023	\$ 11	\$ 589,145	\$ (412,323)	\$ 176,833	\$ 733	\$ 177,566
Balance (in Shares) at Jun. 30, 2023	105,323	428				

**Condensed Consolidated
Statements of Cash Flows
(Unaudited) - USD (\$)
\$ in Thousands**

6 Months Ended

Jun. 30, 2023 Jun. 30, 2022

Cash flows from operating activities:

Net loss	\$ (61,071)	\$ (22,041)
----------	-------------	-------------

Adjustments to reconcile net loss to net cash used in operating activities:

Depreciation and amortization	12,890	7,583
Non-cash interest	686	360
Loss on extinguishment of debt	1,217	
Change in fair value – warrant liabilities		(4,274)
Stock-based compensation	2,853	1,817
Deferred income taxes		(6,161)

Changes in operating assets and liabilities:

Accounts receivable	11,467	(6,148)
Inventories, net	(5,061)	13,804
Prepaid expenses and other assets	2,952	3,481
Operating leases, net	1,315	4,178
Accounts payable	3,304	(37,027)
Accrued sales returns	(910)	(2,005)
Accrued compensation	(2,709)	354
Customer prepayments	1,025	(5,722)
Accrued rebates and allowances	(3,977)	(2,854)
Other accrued liabilities	(2,034)	1,851
Net cash used in operating activities	(38,053)	(52,804)

Cash flows from investing activities:

Purchase of property and equipment	(5,443)	(24,233)
Investment in intangible assets	(380)	(1,822)
Net cash used in investing activities	(5,823)	(26,055)

Cash flows from financing activities:

Payments on term loan	(24,656)	(2,531)
Payments on revolving line of credit		(55,000)
Payments for debt issuance costs	(2,898)	(1,242)
Proceeds from stock offering	60,300	98,210
Payments for public offering costs	(3,301)	(5,344)
Proportional Representation Preferred Linked Stock redemption fee	(105)	
Tax receivable agreement payments	(269)	(5,847)
Proceeds from exercise of stock options		166
Net cash provided by financing activities	29,071	28,412
Net decrease in cash, cash equivalents and restricted cash	(14,805)	(50,447)
Cash, cash equivalents and restricted cash, beginning of the year	41,754	91,616
Cash, cash equivalents and restricted cash, end of the period	26,949	41,169

Supplemental disclosures of cash flow information:

Cash paid during the period for interest, net of amounts capitalized	(226)	1,345
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<u>Cash paid during the period for income taxes</u>	281	219
<u>Supplemental schedule of non-cash investing and financing activities:</u>		
<u>Property and equipment included in accounts payable</u>	3,209	3,648
<u>Accrued distributions</u>		\$ 228

Organization

**6 Months Ended
Jun. 30, 2023**

[Organization \[Abstract\]](#)
[Organization](#)

1. Organization

Purple Innovation, Inc.'s mission is to help people feel and live better through innovative comfort solutions.

Purple Innovation, Inc. collectively with its subsidiary (the "Company" or "Purple Inc.") is an omni-channel Company that began as a digitally-native vertical brand founded on comfort product innovation with premium offerings. The Company designs and manufactures a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, bases, sheets, and other products. The Company markets and sells its products through its e-commerce online channels, retail brick-and-mortar wholesale partners, Purple owned retail showrooms, and third-party online retailers.

The Company was incorporated in Delaware on May 19, 2015 as a special purpose acquisition company under the name of Global Partnership Acquisition Corp ("GPAC"). On February 2, 2018, the Company consummated a transaction structured similar to a reverse recapitalization (the "Business Combination") pursuant to which the Company acquired a portion of the equity of Purple Innovation, LLC ("Purple LLC"). At the closing of the Business Combination (the "Closing"), the Company became the sole managing member of Purple LLC, and GPAC was renamed Purple Innovation, Inc.

As the sole managing member of Purple LLC, Purple Inc. through its officers and directors is responsible for all operational and administrative decision making and control of the day-to-day business affairs of Purple LLC without the approval of any other member.

On August 31, 2022, the Company acquired all the issued and outstanding stock of Advanced Comfort Technologies, Inc., dba Intellibed ("Intellibed") pursuant to an Agreement and Plan of Merger (the "Merger Agreement"), in which Gelato Merger Sub, Inc., a wholly owned subsidiary of Purple Inc., merged with and into Intellibed, with Intellibed continuing as a wholly owned subsidiary of Purple Inc. On October 3, 2022, Purple Inc. contributed 100% of the membership interest in Intellibed to Purple LLC and Intellibed became a wholly owned subsidiary of Purple LLC. For further discussion see Note 4 — *Acquisition*.

Summary of Significant Accounting Policies

6 Months Ended
Jun. 30, 2023

[Accounting Policies](#)

[\[Abstract\]](#)

[Summary of Significant Accounting Policies](#)

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The condensed consolidated financial statements include the accounts of Purple Inc., its controlled subsidiary Purple LLC, and Intellibed, Purple LLC's wholly owned subsidiary, from the date of acquisition. All intercompany balances and transactions have been eliminated in consolidation. As of June 30, 2023, Purple Inc. held 99.6% of the common units of Purple LLC and Purple LLC Class B Unit holders held 0.4% of the common units in Purple LLC.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting and reflect the financial position, results of operations and cash flows of the Company. Certain information and note disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. As such, these unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022. The unaudited condensed consolidated financial statements were prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, reflect all adjustments (all of which were considered of normal recurring nature) considered necessary to present fairly the Company's financial results. The results of the three and six months ended June 30, 2023 are not necessarily indicative of the results to be expected for the fiscal year ending December 31, 2023 or for any other interim period or other future year.

Variable Interest Entities

Purple LLC is a variable interest entity. The Company determined that it is the primary beneficiary of Purple LLC as it is the sole managing member and has the power to direct the activities most significant to Purple LLC's economic performance as well as the obligation to absorb losses and receive benefits that are potentially significant. At June 30, 2023, Purple Inc. had a 99.6% economic interest in Purple LLC and consolidated 100% of Purple LLC's assets, liabilities and results of operations in the Company's unaudited condensed consolidated financial statements contained herein. The holders of Purple LLC Class B Units (the "Class B Units") held 0.4% of the economic interest in Purple LLC as of June 30, 2023. For further discussion see Note 16 — *Stockholders' Equity*.

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements in conformity with GAAP requires the Company to establish accounting policies and to make estimates and judgments that affect the reported amounts of assets and liabilities and disclose contingent assets and liabilities as of the date of the unaudited condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. The Company bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. The Company regularly makes significant estimates and assumptions including, but not limited to, estimates that affect revenue recognition, accounts receivable and allowance for credit losses, valuation of inventories, sales returns, warranty returns, fair value of assets acquired and liabilities assumed in a business combination, warrant liabilities, stock based compensation, the recognition and measurement of loss contingencies, estimates of current and deferred income taxes, deferred income tax valuation allowances, and amounts associated with the

Company's tax receivable agreement with InnoHold, LLC ("InnoHold"). Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. Actual results could differ materially from those estimates.

Recent Accounting Pronouncements

Measurement of Credit Losses

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"), which was further updated and clarified by the FASB through issuance of additional related ASUs. This guidance replaces the existing incurred loss impairment guidance and establishes a single allowance framework for financial assets carried at amortized cost based on expected credit losses. The estimate of expected credit losses requires the incorporation of historical information, current conditions, and reasonable and supportable forecasts. These updates are effective for public companies, excluding Smaller Reporting Companies ("SRC"), for annual periods beginning after December 15, 2019, including interim periods therein. The standard is effective for all other entities for annual periods beginning after December 15, 2022, including interim periods therein. The standard is effective for the Company's interim and annual financial periods beginning January 1, 2023. This standard was adopted utilizing a modified retrospective approach. The adoption of this standard on January 1, 2023 did not have a material impact on the Company's condensed consolidated financial statements and related disclosures.

**Underwritten Offering of
Class A Common Stock**

**6 Months Ended
Jun. 30, 2023**

[Underwritten Offering of
Class A Common Stock](#)

[\[Abstract\]](#)

[Underwritten Offering of
Class A Common Stock](#)

3. Underwritten Offering of Class A Common Stock

In February 2023, the Company completed an underwritten offering of 13.4 million shares of Class A common stock at a price of \$4.50 per share. The underwriters did not exercise their over-allotment option. The aggregate net proceeds received by the Company from the offering, after deducting offering fees and expenses of \$3.3 million, totaled \$57.0 million.

Acquisition

**6 Months Ended
Jun. 30, 2023**

[Acquisition \[Abstract\]](#)
[Acquisition](#)

4. Acquisition

On August 31, 2022, pursuant to the Merger Agreement, the Company acquired Intellibed, a premium sleep and health wellness company, offering gel-based mattresses scientifically designed for maximum back support, spinal alignment and pressure point relief. The addition of Intellibed increased product offerings to customers, expanded market opportunities, capitalized on synergies of the combined companies, and increased opportunities for innovation. In addition, the acquisition allowed the Company to consolidate ownership of its intellectual property licensed to Intellibed and more fully capitalize on growing demand for products with gel technologies.

The acquisition date fair value of the consideration transferred for Intellibed was \$28.3 million, which consisted of the following (in thousands):

Fair value of Class A common stock issued at closing	\$ 23,069
Fair value of Class A common stock held in escrow	1,467
Fair value of contingent consideration	1,471
Fair value of effective settlement of preexisting relationships	1,672
Transaction expenses paid on behalf of Intellibed	546
Due to seller	75
Fair value of total purchase consideration	<u>\$ 28,300</u>

The fair value of common stock issued at closing consisted of approximately 8.1 million shares of Class A common stock valued using the acquisition date closing price of \$2.86. The fair value of common stock held in escrow consisted of 0.5 million shares of Class A common stock valued using the acquisition date closing price of \$2.86. These shares are being held in escrow pending resolution of net working capital adjustments and certain indemnification matters, as described in the Merger Agreement.

Contingent consideration represents the fair value of 1.5 million shares of Class A common stock issuable to Intellibed security holders if the closing price of the Company's stock does not equal or exceed \$5.00 for at least ten trading days over any period of 30 consecutive trading days during the period beginning on the six-month anniversary of the closing date and ending on the 18-month anniversary of the closing date. The contingent shares were valued using a Monte-Carlo simulation model. Because the contingent consideration is payable with a fixed number of shares of the Company's Class A common stock, it is classified as equity and will not require remeasurement in subsequent periods.

The fair value of effective settlement of preexisting relationships includes \$1.4 million related to the fair value of a preexisting legal matter with Intellibed that was effectively settled on the acquisition date and \$0.3 million related to the fair value of a preexisting royalty liability owed by Intellibed to the Company that was also effectively settled on the acquisition date. As a result of effectively settling the preexisting legal matter with Intellibed, the Company recorded a gain of \$1.4 million as other income (expense), net in the consolidated statement of operations during the third quarter of 2022. As a result of effectively settling the preexisting royalty liability, the Company and Intellibed recorded a corresponding receivable and payable, respectively, for the same \$0.3 million amount that was eliminated in consolidation.

The Company recorded the acquisition based on the fair value of the consideration transferred and then allocated the purchase price to the identifiable assets acquired and liabilities assumed based on their respective preliminary estimated fair values as of the acquisition date. Determining the fair value of assets acquired and liabilities assumed required management to use significant judgment and estimates including the selection of valuation methodologies, estimates

of future revenues and cash flows, discount rates, and asset lives, among other items. While the Company used its best estimates and assumptions as a part of the purchase price allocation process to accurately value the assets acquired, including intangible assets, and the liabilities assumed at the acquisition date, the Company's estimates are inherently uncertain and subject to refinement. Consequently, during the measurement period, which could be up to one year from the acquisition date, the Company may record adjustments to the fair values of the assets acquired and the liabilities assumed, with a corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the values of assets acquired or the liabilities assumed, whichever comes first, any subsequent adjustments will be reflected in the Company's consolidated statement of operations.

During the second quarter of 2023, the Company updated the preliminary valuation of the fair value of tangible and intangible assets acquired and liabilities assumed, which required a measurement period adjustment of \$0.1 million to increase goodwill. Based upon the purchase price allocation, the following table summarizes the preliminary fair value of the assets acquired and liabilities assumed in the acquisition as of the date of acquisition, the measurement period adjustments and the as adjusted as of June 30, 2023 (in thousands):

	At date of acquisition	Measurement period adjustments	As adjusted June 30, 2023
Net tangible assets (liabilities):			
Cash, cash equivalents and restricted cash	\$ 4,194	\$ 12	\$ 4,206
Accounts receivable	5,051	(357)	4,694
Inventory	4,182	(575)	3,607
Other current assets	126	200	326
Property and equipment	7,000	—	7,000
Operating lease right-of-use assets	5,491	—	5,491
Other long-term assets	68	—	68
Accounts payable	(2,285)	(460)	(2,745)
Other current liabilities	(2,818)	545	(2,273)
Operating lease obligations	(4,373)	—	(4,373)
Deferred tax liabilities	(3,868)	(374)	(4,242)
Net tangible assets (liabilities)	12,768	(1,009)	11,759
Goodwill	6,441	(1,420)	5,021
Customer relationships	8,476	2,400	10,876
Developed technology	615	29	644
Net assets acquired and liabilities assumed	\$ 28,300	\$ —	\$ 28,300

Due to the close proximity of the acquisition date to the Company's first reporting date after the transaction, the Company recorded the assets acquired and liabilities assumed at preliminary estimates of fair value. As a result, the Company had not finalized the determination of the working capital adjustments and the fair values allocated to various assets and liabilities, income tax provision, intangible assets and the residual amount allocated to goodwill. While the final determination of working capital adjustments was still pending at June 30, 2023, the table above reflects measurement period adjustments made to various assets acquired and liabilities assumed based on updated information, and revisions to reflect the final fair value analysis associated with the two intangible assets. The corresponding offsets for these measurement period adjustments was goodwill.

The Company believes the amount of goodwill resulting from the purchase price allocation is primarily attributable to expected synergies from the assembled workforce, an increase in development capabilities, increased offerings to customers, expanded market opportunities, and enhanced opportunities for growth and innovation. Goodwill is not being amortized but instead is tested for impairment at least annually or more frequently if certain indicators of impairment are present. In the event that goodwill becomes impaired, the Company will record an expense for the amount impaired during the quarter in which the determination is made. The goodwill recorded is not deductible for income tax purposes.

The two identified definite lived intangible assets, comprised of customer relationships and developed technology, are being amortized over their estimated useful lives of ten and two years, respectively. The customer relationships intangible asset represents the estimated fair value of the underlying relationships with Intellibed customers, valued utilizing the multi-period excess earnings method. The developed technology intangible represents the fair value of Intellibed industry-specific cloud and mobile software and related technologies, valued using the cost to recreate method.

The cash, cash equivalents and restricted cash balance acquired included \$1.7 million of cash deposited by Intellibed in a separate account pursuant to an escrow agreement with the Company that will end on August 31, 2023. The purpose of the escrow cash amount was to cover Intellibed's estimated state income tax liabilities, sales tax liabilities and related filing expenses that existed prior to the acquisition date. If the actual liabilities are less than estimated, any excess cash will be returned to the previous shareholders of Intellibed. If payments for these items exceed the escrow balance, the Company will be required to pay the excess. The Company recorded the \$1.7 million of cash on August 31, 2022 as an acquired restricted cash balance that is included in cash, cash equivalents and restricted cash in the condensed consolidated balance sheets as of June 30, 2023 and December 31, 2022. The Company also recorded on August 31, 2022, an assumed liability totaling \$1.3 million for the sales and use tax and state and local income tax liabilities exposure that existed at the date of acquisition and was reflected in other current liabilities in the condensed consolidated balance sheet.

Fair Value Measurements

6 Months Ended

Jun. 30, 2023

[Fair Value Measurements](#)

[Disclosure \[Abstract\]](#)

[Fair Value Measurements](#)

5. Fair Value Measurements

The Company uses the fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, essentially an exit price, based on the highest and best use of the asset or liability. The levels of the fair value hierarchy are:

Level 1—Quoted market prices in active markets for identical assets or liabilities;

Level 2—Significant other observable inputs (i.e., quoted prices for similar items in active markets, quoted prices for identical or similar items in markets that are not active, inputs other than quoted prices that are observable, such as interest rate and yield curves, and market-corroborated inputs); and

Level 3—Unobservable inputs in which there is little or no market data, which require the reporting unit to develop its own assumptions.

The classification of fair value measurements within the established three-level hierarchy is based upon the lowest level of input that is significant to the measurements. Financial instruments, although not recorded at fair value on a recurring basis include cash and cash equivalents, receivables, accounts payable and the Company's debt obligations. The carrying amounts of cash and cash equivalents, receivables, accounts payable and accrued expenses approximate fair value because of the short-term nature of these accounts. The fair value of the Company's debt instruments is estimated to be face value based on the contractual terms of the debt arrangements and market-based expectations.

The sponsor warrant liabilities (see Note 12 — *Warrant Liabilities* for more information) are Level 3 instruments and use internal models to estimate fair value using certain significant unobservable inputs which required determination of relevant inputs and assumptions. Accordingly, changes in these unobservable inputs may have had a significant impact on fair value. Such inputs included risk free interest rate, expected average life, expected dividend yield, and expected volatility. These Level 3 liabilities generally decreased (increased) in value based upon an increase (decrease) in risk free interest rate and expected dividend yield. Conversely, the fair value of these Level 3 liabilities generally increased (decreased) in value if the expected average life or expected volatility were to increase (decrease). Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement.

There were no sponsor warrants outstanding on June 30, 2023 and the 1.9 million sponsor warrants outstanding on December 31, 2022 had a negligible fair value. As a result, activity for the six months ended June 30, 2023 was de minimis. The following table summarizes the Company's total Level 3 liability activity for the six months ended June 30, 2022.

(In thousands)	Sponsor Warrants
Fair value as of December 31, 2021	\$ 4,343
Fair value of warrants exercised	—
Change in valuation inputs ⁽¹⁾	(4,274)
Fair value as of June 30, 2022	<u>\$ 69</u>

- (1) Changes in valuation inputs are recognized as the change in fair value – warrant liabilities in the condensed consolidated statement of operations.

**Revenue from Contracts
with Customers**

**6 Months Ended
Jun. 30, 2023**

**Revenue from Contract with
Customer [Abstract]**

**Revenue from Contracts with
Customers**

6. Revenue from Contracts with Customers

The Company markets and sells its products through e-commerce online channels, retail brick-and-mortar wholesale partners, Purple owned retail showrooms, and third-party online retailers. Revenue is recognized when the Company satisfies its performance obligations under the contract which involves transferring the promised products to the customer, subject to shipping terms.

Disaggregated Revenue

The Company classifies revenue into two sales categories: direct-to-consumer (“DTC”) and wholesale. The DTC category is comprised of the Company’s e-commerce channel that sells directly to consumers who purchase online and through our contact center, and the Purple owned retail showrooms channel that sells directly to consumers who purchase at a showroom location. The wholesale channel includes all product sales to our wholesale partners where consumers make purchases at their retail locations or through their online channels. The Company classifies products into two major types: sleep products and other. Sleep products include mattresses, platforms, adjustable bases, mattress protectors, pillows and sheets. Other products include cushions and various other products.

The following tables present the Company’s net revenue disaggregated by sales category and product type (in thousands):

Sales Category	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
DTC	\$ 68,056	\$ 81,628	\$ 134,566	\$ 167,164
Wholesale	52,816	62,481	95,678	120,124
Revenues, net	<u>\$ 120,872</u>	<u>\$ 144,109</u>	<u>\$ 230,244</u>	<u>\$ 287,288</u>

Product Type	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Sleep products	\$ 108,296	\$ 131,738	\$ 207,131	\$ 260,704
Other	12,576	12,371	23,113	26,584
Revenues, net	<u>\$ 120,872</u>	<u>\$ 144,109</u>	<u>\$ 230,244</u>	<u>\$ 287,288</u>

Contract Balances

Payment for sale of products through the e-commerce online channel, third-party online retailers, Purple owned retail showrooms and contact center is collected at point of sale in advance of shipping the products. Amounts received for unshipped products are recorded as customer prepayments. Customer prepayments totaled \$5.5 million and \$4.5 million at June 30, 2023 and December 31, 2022, respectively. During the six months ended June 30, 2023 and 2022, the Company recognized all revenue that was deferred in customer prepayments at December 31, 2023 and 2022, respectively.

Inventories, Net

**6 Months Ended
Jun. 30, 2023**

[Inventory Net \[Abstract\]](#)
[Inventories, Net](#)

7. Inventories, Net

Inventories, net consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Raw materials	\$27,496	\$ 31,803
Work-in-process	6,834	2,261
Finished goods	45,596	40,476
Inventory obsolescence reserve	(1,524)	(1,343)
Inventories, net	<u>\$78,402</u>	<u>\$ 73,197</u>

**Property and Equipment,
Net**

**6 Months Ended
Jun. 30, 2023**

[Property, Plant and
Equipment \[Abstract\]](#)

[Property and Equipment, Net](#)

8. Property and Equipment, Net

Property and equipment, net consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Equipment	\$ 71,409	\$ 66,533
Equipment in progress	15,953	19,099
Leasehold improvements	57,969	56,114
Furniture and fixtures	26,939	26,290
Office equipment	3,884	4,393
Total property and equipment	176,154	172,429
Accumulated depreciation	(44,661)	(35,756)
Property and equipment, net	<u>\$ 131,493</u>	<u>\$ 136,673</u>

Equipment in progress reflects equipment, primarily related to mattress manufacturing, which is being constructed and was not in service at June 30, 2023 or December 31, 2022. Interest capitalized on borrowings during the active construction period of major capital projects totaled \$0.1 million and \$0.5 million during the three and six months ended June 30, 2023, respectively and totaled \$0.2 million and \$0.4 million during the three and six months ended June 30, 2022, respectively. Depreciation expense was \$4.9 million and \$9.7 million during the three and six months ended June 30, 2023, respectively, and totaled \$3.6 million and \$7.1 million during the three and six months ended June 30, 2022, respectively.

Leases

6 Months Ended Jun. 30, 2023

[Leases \[Abstract\]](#)

[Leases](#)

9. Leases

The Company leases its manufacturing and distribution facilities, corporate offices, Purple owned retail showrooms and certain equipment under non-cancelable operating leases with various expiration dates through 2036. The Company's office and manufacturing leases provide for initial lease terms up to 16 years, while Purple owned retail showrooms have initial lease terms of up to ten years. Certain leases may contain options to extend the term of the original lease. The exercise of lease renewal options is at the Company's discretion. Any lease renewal options are included in the lease term if exercise is reasonably certain at lease commencement. The Company also leases vehicles and other equipment under both operating and finance leases with initial lease terms of three to five years. The right-of-use asset balances for finance leases, which totaled \$0.9 million and \$1.0 million at June 30, 2023 and December 31, 2022, respectively, were included with operating lease right-of-use assets on the condensed consolidated balance sheets.

The following table presents the Company's lease costs (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Operating	\$ 4,620	\$ 3,690	\$ 9,505	\$ 6,838
Variable	1,204	409	2,177	1,123
Short-term	—	—	—	11
Total lease costs	<u>\$ 5,824</u>	<u>\$ 4,099</u>	<u>\$ 11,682</u>	<u>\$ 7,972</u>

The table below reconciles the undiscounted cash flows for each of the first five years and total remaining years to the operating lease liabilities recorded on the condensed consolidated balance sheet at June 30, 2023 (in thousands):

2023 (excluding the six months ended June 30, 2023) ^(a)	\$ 9,760
2024	20,779
2025	20,378
2026	19,173
2027	19,384
Thereafter	71,049
Total operating lease payments	160,523
Less – lease payments representing interest	(32,584)
Present value of operating lease payments	<u>\$ 127,939</u>

(a) Amount consists of \$10.5 million of undiscounted cash flows offset by \$0.8 million of tenant improvement allowances which are expected to be fully utilized in fiscal 2023.

As of June 30, 2023 and December 31, 2022, the weighted-average remaining term of operating leases was 8.4 years and 8.8 years, respectively, and the weighted-average discount rate of operating leases was 5.56% and 5.51%, respectively.

The following table provides supplemental information related to the Company's condensed consolidated statement of cash flows for the six months ended June 30, 2023 and 2022 (in thousands):

**Six Months Ended
June 30,**

	2023	2022
Cash paid for amounts included in present value of operating lease liabilities ^(b)	\$ 6,691	\$ 3,425
Right-of-use assets obtained in exchange for operating lease liabilities	3,518	25,029

Operating cash flows paid for operating leases are included within the change in other assets (b) and liabilities within the Condensed Consolidated Statement of Cash Flows offset by non-cash right-of-use asset amortization and lease liability accretion.

Other Current Liabilities

6 Months Ended
Jun. 30, 2023

[Other Liabilities, Current \[Abstract\]](#)

[Other Current Liabilities](#)

10. Other Current Liabilities

Other current liabilities consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Warranty accrual – current portion	\$ 4,624	\$ 4,985
Insurance financing	1,086	1,010
Accrued sales tax liability assumed in acquisition	398	753
Accrued property taxes	408	28
Tax receivable agreement liability – current portion	—	269
Other	843	1,085
Total other current liabilities	<u>\$ 7,359</u>	<u>\$ 8,130</u>

Debt

**6 Months Ended
Jun. 30, 2023**

[Debt Disclosure \[Abstract\]](#) [Debt](#)

11. Debt

Debt consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Term loan	\$ —	\$ 24,656
Less: unamortized debt issuance costs	—	(999)
Total debt	<u>\$ —</u>	<u>\$ 23,657</u>

Term Loan and Revolving Line of Credit

On September 3, 2020, Purple LLC entered into a financing arrangement with KeyBank National Association and a group of financial institutions (the “2020 Credit Agreement”). The 2020 Credit Agreement provided for a \$45.0 million term loan and a \$55.0 million revolving line of credit. The term loan was to be repaid in accordance with a five-year amortization schedule or prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. The revolving credit facility had a term of five years and carried the same interest provisions as the term debt. A commitment fee was due quarterly based on the applicable margin applied to the unused total revolving commitment. (See Note 21—*Subsequent Events* for information on the new asset-based lending arrangement entered into by the Company on August 7, 2023).

Pursuant to a Pledge and Security Agreement between Purple LLC, KeyBank and the Company (the “Security Agreement”), the 2020 Credit Agreement was secured by a perfected first-priority security interest in the assets of Purple LLC and the Company, including a security interest in all intellectual property. Also, the Company agreed to an unconditional guaranty of the payment of all obligations and liabilities of Purple LLC under the 2020 Credit Agreement. The Security Agreement contained a pledge, as security for the Company’s guaranty, of all its ownership interest in Purple LLC. The 2020 Credit Agreement also provided for standard events of default, such as for non-payment and failure to perform or observe covenants, and contained standard indemnifications benefitting the lenders.

The 2020 Credit Agreement included representations, warranties and certain covenants of Purple LLC and the Company. Under the 2020 Credit Agreement, Purple LLC was subject to several affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, subject to certain exceptions. In particular, Purple LLC was (i) subject to annual capital expenditure limits that can be adjusted based on the Company achieving certain net leverage ratio thresholds as provided in the 2020 Credit Agreement, (ii) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the 2020 Credit Agreement, and (iii) required to maintain minimum consolidated net leverage and fixed charge coverage ratio thresholds at certain measurement dates (as defined in the 2020 Credit Agreement). Purple LLC was also restricted from paying dividends or making other distributions or payments on its capital stock, subject to limited exceptions. If the Company or Purple LLC failed to perform their obligations under these and other covenants, or if any event of default had occurred, the revolving loan commitments under the 2020 Credit Agreement could have been terminated and any outstanding borrowings, together with accrued interest, could have been declared immediately due and payable.

The Company's operating and financial results for the year ended December 31, 2021 did not satisfy the financial and performance covenants required under the 2020 Credit Agreement. On February 28, 2022, prior to the covenant compliance certification date, the Company entered into the first amendment of the 2020 Credit Agreement to avoid a breach of these covenants and potential default. Pursuant to this amendment, the Company incurred fees and expenses of \$0.8 million that were recorded as debt issuance costs in the condensed consolidated balance sheet and made a \$2.5 million payment on the term loan to cover the four quarterly principal payments due in 2022. The Company accounted for this amendment as a modification of existing debt in accordance with ASC 470 – *Debt*. This amendment contained a covenant waiver period such that the net leverage ratio and fixed charge coverage ratio were not tested for the fiscal quarters ended December 31, 2021, March 31, 2022 and June 30, 2022. Other modifications in the amendment included revised leverage ratio and fixed charge coverage definitions and thresholds, the addition of minimum liquidity requirements with mandatory prepayments of the revolving loan if cash exceeded \$25.0 million, new weekly and monthly reporting requirements, limits on the amount of capital expenditures, the addition of a lease incurrence test for opening additional showrooms, and additional negative covenants during a covenant amendment period that extends into 2023 until certain conditions are met. In addition, the interest rate on any outstanding borrowings under the 2020 Credit Agreement was changed from LIBOR with a floor of 0.5% plus an applicable margin (historically at 3.0%) to an initial rate of SOFR with a floor of 0.5% plus an applicable margin of 4.75%, for a total rate of 5.25% as long as the applicable liquidity threshold is met. If the Company did not meet this threshold, the interest rate would have increased to SOFR with a floor of 0.5% plus 9.00%. Once the Company achieved a consolidated leverage ratio that was below 3.00 to 1.00, the interest rate would have been based on SOFR with a floor of 0.5% plus a 3.00% to 3.75% margin depending on the consolidated leverage ratio.

On March 23, 2022, the Company entered into a second amendment to the 2020 Credit Agreement. This amendment modified the 2020 Credit Agreement to allow Coliseum Capital Management, LLC, on behalf of its funds, managed accounts and its investment affiliates (individually “CCM” and collectively “Coliseum”) to acquire 35% or more of the combined voting power of all equity interests of the Company entitled to vote for the election of members of the Company's board of directors (“Board”) without constituting an event of default. Coliseum is considered a related party of the Company in that Adam Gray, a member of our board of directors, serves as a managing partner of Coliseum. Pursuant to the second amendment of the 2020 Credit Agreement, the Company incurred fees and expenses of \$0.4 million that were recorded as debt issuance costs in the condensed consolidated balance sheet. The Company accounted for this amendment as a modification of existing debt in accordance with ASC 470 – *Debt*. For further discussion see Note 15—*Related Party Transactions—Coliseum Capital Management, LLC*.

On May 13, 2022 and September 9, 2022, the Company entered into third and fourth amendments, respectively, to the 2020 Credit Agreement. These amendments modified the permitted leases schedule to reflect a change in showroom locations and a new lease for an innovation building. The amendments did not meet the criteria for a modification of existing debt and minimal costs were recorded as general and administrative expense in the condensed consolidated statement of operations.

On July 14, 2022, the Company received consent under the 2020 Credit Agreement that allowed the Company's acquisition of Intellibed to constitute a permitted acquisition under the 2020 Credit Agreement. The Company incurred fees and expenses of \$0.3 million that were recorded as general and administrative expense in the condensed consolidated statement of operations.

In December 2022, the Company made a \$15.0 million prepayment against the outstanding term loan balance without payment of a premium or penalty.

On February 17, 2023, the Company entered into a fifth amendment to the 2020 Credit Agreement. As a condition of entering into the amendment, the Company repaid the \$24.7 million outstanding balance on the term loan plus accrued interest. The amendment provided that the maximum leverage ratio covenant would not be tested for the first and second quarters of 2023, revised the ratio to 4.50x for the third quarter of 2023, and revised the ratio to 3.00x for all quarters

thereafter. In addition, the minimum fixed charge coverage ratio covenant was not to be tested for the first and second quarters of 2023, was revised to 1.50x for the third and fourth quarters of 2023, and was revised to 2.00x for all quarters thereafter. The amendment also revised the lease incurrence test, which allowed the Company to incur ten new showroom leases for stores that would open in 2023 and six new leases for stores that would open in 2024. Moreover, beginning in the fourth quarter of 2023, we would have been allowed to begin entering into new leases for stores that would open in 2024, subject to leverage ratio requirements. The leverage ratio was to be less than 2.50x to sign leases, with up to a maximum of six new leases per quarter, increasing to eight new leases per quarter if the leverage ratio is less than 2.00x. The amendment further provided certain minimum consolidated EBITDA covenants for the first and second quarters of 2023 based on total unrestricted cash and unused revolver availability. The amendment also modified the definition of consolidated EBITDA to allow for nonrecurring / one-time and non-cash expenses and certain other expenses that are cash capped. In addition, for purposes of the definition of consolidated EBITDA, annual non-recurring and unusual out-of-pocket legal expenses were capped at \$5.0 million for 2023 and \$2.0 million per year thereafter. Moreover, the amendment (i) reduced the amount available under the revolving line of credit to \$50.0 million, (ii) provided that the maturity date of the 2020 Credit Agreement would spring forward to June 30, 2024 if consolidated EBITDA was not greater than \$15.0 million for 2023, (iii) reduced limits on maximum growth capital expenditures to \$32.0 million for 2023 and \$35.0 million for 2024 and 2025, and (iv) revised the current minimum liquidity covenant of \$25.0 million to provide that it would increase to \$30.0 million for each three-month period following the applicable fiscal quarter if the leverage ratio was greater than 3.00x for any fiscal quarter ending on or after the third quarter of 2023. Pursuant to this amendment, the Company incurred fees and expenses of \$2.9 million that were recorded as debt issuance costs in the condensed consolidated balance sheet. The amendment was accounted for as an extinguishment of debt and \$1.2 million of unamortized debt issuance costs related to the term loan were recorded as loss on extinguishment of debt in the condensed consolidated statement of operations.

On April 26, 2023, the Company received consent under the 2020 Credit Agreement that allowed the Company's redemption of Proportional Representation Preferred Linked Stock ("PRPLS") issued by the Company on February 24, 2023, in an aggregate amount not to exceed \$0.2 million as agreed by the Company in an April 19, 2023 Cooperation Agreement (the "Cooperation Agreement") entered into with Coliseum in connection with a complaint filed by Coliseum against the Company, and a waiver of any possible default related to entering into that Cooperation Agreement prior to receiving such consent. (See Note 15—*Related Party Transactions—Coliseum Capital Management, LLC* for information regarding the complaint previously filed by Coliseum, for information regarding events leading up to the Company's issuance of the PRPLS, and for information regarding terms of the Cooperation Agreement and redemption of the PRPLS.)

On May 10, 2023, the Company entered into a sixth amendment to the 2020 Credit Agreement. This amendment clarified an ambiguity identified in the first sentence of Section 7.07(d), as amended by the fifth amendment, which provided that Minimum Consolidated EBITDA as of each of March 31, 2023 and June 30, 2023 pertained to Consolidated EBITDA for each such fiscal quarter rather than Consolidated EBITDA for the trailing twelve-month period.

Interest expense under the 2020 Credit Agreement totaled \$0.5 million and \$1.1 million for the three and six months ended June 30, 2023, respectively, and totaled \$0.9 million and \$2.0 million for the three and six months ended June 30, 2022, respectively.

Warrant Liabilities

**6 Months Ended
Jun. 30, 2023**

[Warrant Liabilities](#)

[\[Abstract\]](#)

[Warrant Liabilities](#)

12. Warrant Liabilities

The Company issued 12.8 million sponsor warrants pursuant to a private placement conducted simultaneously with its initial public offering. Each of these warrants entitled the registered holder to purchase one-half of one share of the Company's Class A common stock at a price of \$5.75 per half share (\$11.50 per full share), subject to adjustment pursuant to the terms of the warrant agreement. These sponsor warrants contained certain provisions that do not meet the criteria for equity classification and therefore were recorded as liabilities. The liability for these warrants was recorded at fair value on the date of the Business Combination and subsequently re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings.

Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement. These sponsor warrants had no fair value on the date of expiration.

There were no sponsor warrants exercised during the six months ended June 30, 2022. The 1.9 million sponsor warrants outstanding at June 30, 2022 had a fair value of \$0.1 million.

The Company determined the fair value of the sponsor warrants using the Black Scholes model with the following assumptions:

	June 30, 2022
Trading price of common stock on measurement date	\$ 3.06
Exercise price	\$ 5.75
Risk free interest rate	2.51%
Warrant life in years	0.6
Expected volatility	98.78%
Expected dividend yield	—

During the three and six months ended June 30, 2022, the Company recognized gains of \$0.3 million and \$4.3 million, respectively, in its condensed consolidated statements of operations related to decreases in the fair value of the sponsor warrants outstanding at the end of the respective period.

Other Long-Term Liabilities

6 Months Ended
Jun. 30, 2023

[Other Long-Term Liabilities \[Abstract\]](#)

[Other Long-Term Liabilities](#)

13. Other Long-Term Liabilities

Other long-term liabilities consist of the following (in thousands):

	June 30, 2023	December 31, 2022
Warranty accrual	\$20,172	\$ 20,744
Asset retirement obligations	2,163	2,098
Other	6	19
Total	22,341	22,861
Less – current portion of warranty accrual	(4,624)	(4,985)
Other long-term liabilities, net of current portion	<u>\$17,717</u>	<u>\$ 17,876</u>

Commitments and Contingencies

6 Months Ended
Jun. 30, 2023

[Commitments and Contingencies \[Abstract\]](#)

[Commitments and Contingencies](#)

14. Commitments and Contingencies

Warranty Liabilities

The Company provides a limited warranty on most of the products it sells. The estimated warranty costs, which are expensed at the time of sale and included in cost of revenues, are based on the results of product testing, industry and historical trends and warranty claim rates incurred, and are adjusted for any current or expected trends as appropriate. Actual warranty claim costs could differ from these estimates. The Company regularly assesses and adjusts the estimate of accrued warranty claims by updating claims rates for actual trends and projected claim costs. The Company classifies estimated warranty costs expected to be paid beyond a year as a long-term liability.

The Company had the following activity for warranty liabilities (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Balance at beginning of period	\$ 19,997	\$ 16,368	\$ 20,744	\$ 15,013
Additions charged to expense for current period sales	1,471	2,173	2,167	4,336
Deduction from reserves for current period claims	(1,296)	(832)	(2,739)	(1,640)
Balance at end of period	<u>\$ 20,172</u>	<u>\$ 17,709</u>	<u>\$ 20,172</u>	<u>\$ 17,709</u>

Required Member Distributions

Prior to the Business Combination and pursuant to the then applicable First Amended and Restated Limited Liability Company Agreement (the “First Purple LLC Agreement”), Purple LLC was required to distribute to its members an amount equal to 45 percent of Purple LLC’s net taxable income following the end of each fiscal year. The First Purple LLC Agreement was amended and replaced by the Second Amended and Restated Limited Liability Company Agreement (the “Second Purple LLC Agreement”) on February 2, 2018 as part of the Business Combination. The Second Purple LLC Agreement was amended and replaced by the Third Amended and Restated Limited Liability Company Agreement (the “Third Purple LLC Agreement”) on September 3, 2020. The Second Purple LLC Agreement and the Third Purple LLC Agreement do not include any mandatory distributions, other than tax distributions. There were no tax distributions paid during the six months ended June 30, 2023 and 2022. At June 30, 2023, the Company’s condensed consolidated balance sheet had \$0.1 million of accrued tax distributions included in other current liabilities.

Subscription Agreement and Preemptive Rights

In February 2018, in connection with the Business Combination, the Company entered into a subscription agreement with Coliseum Capital Partners (“CCP”) and Blackwell Partners LLC – Series A (“Blackwell”), pursuant to which CCP and Blackwell agreed to purchase from the Company an aggregate of 4.0 million shares of Class A Stock at a purchase price of \$10.00 per share (the “Coliseum Private Placement”). In connection with the Coliseum Private Placement, the Sponsor assigned (i) an aggregate of 1.3 million additional shares of Class A common stock to CCP and Blackwell and (ii) an aggregate of 3.3 million warrants to purchase 1.6 million shares of Class A common stock to CCP, Blackwell, and Coliseum Co-Invest Debt Fund, L.P. (“CDF”). The

subscription agreement provides CCP and Blackwell with preemptive rights with respect to future sales of the Company's securities. It also provides them with a right of first refusal with respect to certain debt and preferred equity financings by the Company. The Company also entered into a registration rights agreement with CCP, Blackwell, and CDF, providing for the registration of the shares of Class A common stock issued and assigned to CCP and Blackwell in the Coliseum Private Placement, as well as the shares of Class A common stock underlying the warrants received by CCP, Blackwell and CDF. The Company has filed a registration statement with respect to such securities.

Rights of Securities Holders

The holders of certain warrants exercisable into Class A common stock, including CCP, Blackwell and CDF, were entitled to registration rights pursuant to certain registration rights agreements of the Company as of the Business Combination date. In March 2018, the Company filed a registration statement registering these warrants (and any shares of Class A common stock issuable upon the exercise of the warrants), and certain unregistered shares of Class A common stock. The registration statement was declared effective on April 3, 2018. Under the Registration Rights Agreement dated February 2, 2018 between the Company and CCP, Blackwell, and CDF (the "Coliseum Investors"), the Coliseum Investors have the right to make written demands for up to three registrations of certain warrants and shares of Class A common stock held by them, including in underwritten offerings. In an underwritten offering of such warrants and shares of Class A common stock by the Coliseum Investors, the Company will pay underwriting discounts and commissions and certain expenses incurred by the Coliseum Investors. In May 2021, the Coliseum Investors exercised the first of their three written demands for registration in an underwritten offering.

Purple LLC Class B Unit Exchange Right

On February 2, 2018, in connection with the closing of the Business Combination, the Company entered into an exchange agreement with Purple LLC and InnoHold and Class B Unit holders who become a party thereto (the "Exchange Agreement"), which provides for the exchange of Purple LLC Class B Units (the "Class B Units") and shares of Class B common stock (together with an equal number of Class B Units, the "Paired Securities") for, at the Company's option, either (A) shares of Class A common stock at an initial exchange ratio equal to one Paired Security for one share of Class A common stock or (B) a cash payment equal to the product of the average of the volume-weighted closing price of one share of Class A common stock for the ten trading days immediately prior to the date InnoHold or other Class B Unit holders deliver a notice of exchange multiplied by the number of Paired Securities being exchanged. In December 2018, InnoHold distributed Paired Securities to Terry Pearce and Tony Pearce who agreed to become parties to the Exchange Agreement. In June 2019, InnoHold distributed Paired Securities to certain current and former employees who also agreed to become parties to the exchange agreement. Holders of Class B Units may elect to exchange all or any portion of their Paired Securities as described above by delivering a notice to Purple LLC.

In certain cases, adjustments to the exchange ratio will occur in case of a split, reclassification, recapitalization, subdivision or similar transaction of or relating to the Class B Units or the shares of Class A common stock and Class B common stock or a transaction in which the Class A common stock is exchanged or converted into other securities or property. The exchange ratio will also adjust in certain circumstances when the Company acquires Class B Units other than through an exchange for its shares of Class A common stock.

The right of a holder of Paired Securities to exchange may be limited by the Company if it reasonably determines in good faith that such restrictions are required by applicable law (including securities laws), such exchange would not be permitted under other agreements of such holder with the Company or its subsidiaries, including the Third Purple LLC Agreement, or if such exchange would cause Purple LLC to be treated as a "publicly traded partnership" under applicable tax laws.

The Company and each holder of Paired Securities shall bear its own expense regarding the exchange except that the Company shall be responsible for transfer taxes, stamp taxes and similar duties.

There were a de minimis number of Paired Securities exchanged for Class A common stock during the six months ended June 30, 2023. There were no Paired Securities exchanged for Class A common stock during the six months ended June 30, 2022.

Maintenance of One-to-One Ratios

The Third Purple LLC Agreement includes provisions intended to ensure that the Company at all times maintains a one-to-one ratio between (a) (i) the number of outstanding shares of Class A common stock and (ii) the number of Class A Units owned by the Company (subject to certain exceptions for certain rights to purchase equity securities of the Company under a “poison pill” or similar stockholder rights plan, if any, certain convertible or exchangeable securities issued under the Company’s equity compensation plan and certain equity securities issued pursuant to the Company’s equity compensation plan (other than a stock option plan) that are restricted or have not vested thereunder) and (b) (i) the number of other outstanding equity securities of the Company (including the warrants exercisable for shares of Class A common stock) and (ii) the number of corresponding outstanding equity securities of Purple LLC. These provisions are intended to result in non-controlling interest holders having a voting interest in the Company that is identical to their economic interest in Purple LLC.

Non-Income Related Taxes

The Company complies with current law and collects and reports on sales tax and other taxes and required fees in all states in which it does business. The application of existing, new or revised taxes and fees on the Company’s business, in particular, sales taxes, VAT and similar taxes would likely increase the cost of doing business online and decrease the attractiveness of selling products over the internet. The application of these taxes and fees on the Company’s business could also create significant increases in internal costs necessary to capture data and collect and remit taxes and pay the fees. There have been, and will continue to be, substantial ongoing costs associated with complying with the various indirect tax requirements in the numerous markets in which the Company conducts or will conduct business.

Legal Proceedings

On September 20, 2020, Purple LLC filed a complaint in the U.S. Court of International Trade seeking to recover approximately \$7.0 million of Section 301 duties paid at the time of importation on certain Chinese-origin goods. More than 4,000 other complaints have been filed by other companies seeking similar refunds. On March 12, 2021 the United States filed a master answer that applies to all the Section 301 cases, including Purple LLC’s. On July 6, 2021, the court granted a preliminary injunction against liquidation of any unliquidated entries. On April 1, 2022, the court issued an opinion that remanded the case back to the U.S. Trade Representative (“USTR”) to address certain procedural flaws in USTR’s process for determining whether certain products were subject to the Section 301 duties. On August 1, 2022, USTR issued its remand results. On September 14, 2022, the plaintiffs submitted comments on the remand results. USTR filed their response to these comments on November 4, 2022. The plaintiffs filed a reply on December 5, 2022 and the court held a hearing on February 7, 2023. On March 17, 2023, the court issued a final opinion and order upholding the remand results. On May 12, 2023, the opinion and order were appealed to the US Court of Appeals for the Federal Circuit.

On October 13, 2020, Purple LLC filed a lawsuit against Responsive Surface Technology, LLC and its parent company, PatienTech, LLC (collectively referred to as “ReST”) in the U.S. District Court for the District of Utah. The lawsuit arises from ReST’s multiple breaches of its obligations to Purple LLC, including infringing upon Purple LLC’s trademarks, patents, and trade dress, among other claims. Purple seeks monetary damages, injunctive relief, and declaratory judgment based on certain conduct by ReST (“Case I”). On October 21, 2020, shortly after the complaint was filed in Case I, ReST filed a retaliatory lawsuit against Purple LLC, and some

of the Company's board members, Gary DiCamillo, Adam Gray, Joseph Megibow, Terry Pearce, and Tony Pearce, also in the United States District Court for the District of Utah ("Case II"). Subsequently, the two cases were consolidated into one. Case II (now combined with Case I) involves many of the same facts and transactions as Case I. ReST subsequently filed a motion to compel arbitration of the claims in Case I. Purple LLC opposed the motion to compel arbitration, arguing that ReST waived any rights to arbitration and that all the claims in both cases should stay in the courts. However, the Court granted ReST's motion to compel arbitration, and stayed the proceedings in the United States District Court for the District of Utah. Additionally, the Court ruled that ReST's claims against the Company's board members were not subject to arbitration, and the Court stayed ReST's claims against those individuals. Pursuant to the Court's order, Purple LLC filed a demand for arbitration with the American Arbitration Association (the "AAA") on September 1, 2021. ReST filed its counterclaim with the AAA on September 21, 2021. The parties have completed the fact discovery and the expert discovery phases of the arbitration, and a two-week arbitration hearing began on July 31, 2023. ReST was sanctioned for improper litigation conduct, and certain defenses and claims were stricken and costs were ordered to be paid by ReST to Purple LLC. Purple LLC seeks over \$4 million in damages from ReST, whereas at this time ReST has lowered its demand and claims that Purple LLC is liable to it for approximately \$8 million. The outcome of this litigation cannot be predicted at this stage. However, Purple LLC intends to vigorously pursue its claims and defend against the claims made by ReST.

On May 3, 2022, Purple LLC filed a complaint against Photon Interactive UK Limited ("Photon") in the U.S. District Court for the District of Delaware regarding a Master Professional Services Agreement with Photon dated on or around November 1, 2019. Pursuant to the agreement, Photon was required to rebuild Purple Innovation LLC's website architecture and checkout process. Purple LLC paid Photon \$0.9 million under the Agreement. However, Photon failed to deliver any of the required deliverables as specified in the agreement. Purple LLC withheld payment of the final \$0.1 million due pursuant to Photon's invoices pending a resolution with Photon. Since resolution discussions with Photon failed, Purple LLC filed its complaint for breach of contract against Photon seeking, among other damages, reimbursement for all amounts paid to Photon under the agreement. Photon counter-sued, seeking payment for the \$0.1 million withheld by Purple LLC, and also advancing a vague claim for tortious interference. On August 31, 2022, Purple LLC filed an amended complaint adding additional claims pertaining to Photon's failure to deliver a point-of-sale system pursuant to the Master Professional Services Agreement. Purple LLC is seeking judgment against Photon in the amount of \$4 million. The litigation is presently in its discovery phase. Purple LLC expects discovery to conclude in fall 2023. The Company intends to vigorously litigate its claims to resolution.

On August 5, 2022, Purple LLC filed a complaint with the U.S. International Trade Commission ("ITC") against numerous entities and individuals from the People's Republic of China and South Korea ("Respondents") that have been violating Purple LLC's intellectual property rights related to pillow and seat cushion products. The complaint alleged that the Respondents have been violating 19 U.S.C. § 1337 by importing into the United States, selling for importation into the United States, and/or selling in the United States after importation pillow and seat cushion products that infringe Purple LLC's trade dress rights or otherwise constitute unfair competition, infringe a certain Purple LLC design patent, infringe certain Purple LLC registered trademarks, and/or infringe certain Purple LLC utility patents, specifically including U.S. Patent No. 10,772,445. The complaint requested at least the following relief: (i) a General Exclusion Order excluding from entry into the United States all pillow and seat cushion products, regardless of the source of those products, that infringe Purple LLC's asserted intellectual property right; (ii) Limited Exclusion Orders excluding from entry into the United States all pillow and cushion products of the Respondents named in the complaint that infringe any asserted intellectual property rights; and (iii) Cease and Desist Orders against the Respondents named in the complaint barring them from marketing, selling, advertising, or distributing infringing products in the United States, including via on-line retailers. On September 6, 2022, the ITC instituted Investigation No. 337-TA-1328 in response to Purple LLC's complaint. Fact and expert discovery have been completed. Purple LLC has entered into settlement agreements with seven Respondents, and the ITC issued Consent Orders under which those seven Respondents agreed to no longer import infringing products into the United States. Purple LLC also has voluntarily terminated the Investigation as to a number of other Respondents. No actively litigating Respondents remain in

the case. On July 13, 2023, the ITC Administrative Law Judge issued an Initial Determination (“ID”) in which she granted Purple LLC’s Motion for Summary Determination finding that the four remaining Respondents have violated Section 337. The ID also recommended that the ITC issue a General Exclusion Order excluding from entry into the United States all pillows that infringe certain asserted claims of the ‘445 patent, regardless of the source of those products, or, in the alternative, Limited Exclusion Orders directed specifically to the four remaining Respondents. The ID further recommended that the ITC issue Cease and Desist Orders directed specifically to the four remaining Respondents. The ITC’s target date for completion of the investigation is currently November 13, 2023.

On September 22, 2022, Purple LLC filed an action in the U.S. District Court for the District of Utah, currently styled *Purple Innovation, LLC v. Foshan Dirani Design Furniture Co., Ltd.*, No. 2:22-cv-00620-HCN-DAO, against numerous entities and individuals from the People’s Republic of China and South Korea (“Defendants”). Purple LLC subsequently entered into settlement agreements with seven Defendants and voluntarily dismissed without prejudice its claims against certain other Defendants. On March 7, 2023, Purple LLC filed a First Amended Complaint. The operative complaint alleges that the remaining Defendants have infringed certain Purple LLC registered trademarks, have infringed Purple LLC trademark rights and committed unfair competition under Lanham Act § 43(a), have infringed a certain Purple LLC design patent, have infringed certain Purple LLC utility patents, have violated Utah Unfair Competition Act, Utah Code § 13-5a-101 *et seq.*; and/or have committed common law unfair competition. The operative complaint seeks injunctive relief, compensatory damages, disgorgement of profits, punitive and exemplary damages, and attorneys’ fees and costs. On June 13, 2023, the Court issued a Default Certificate entering default against all remaining Defendants. On June 15, 2023, Purple LLC filed a Motion for Preliminary Injunction, Asset Freeze, and Expedited Discovery, which currently remains pending, against all remaining Defendants. Purple LLC intends to vigorously litigate its claims to resolution.

In December 2022, Terry and Tony Pearce, Purple’s founders, filed a complaint against Purple Inc. in the Fourth Judicial District Court in the State of Utah. The Pearces allege that they each entered into employment agreements with Purple LLC in February 2018. The Pearces contend that certain corporate transactions between May 2019 and June 2020 reduced their “ownership interest and voting power in Purple” and that, as a result, they should have continued to be paid a salary between August 2020, when they retired from Purple LLC, and December 2021. The Pearces calculate that they are each owed “no less than \$500,000” in unpaid salary. Purple Inc. has moved to dismiss the Pearces’ claims in full, arguing that the Pearces’ legal theories are flawed and that the amended pleading reflects the Pearces’ inability to rehabilitate their claims. The Company maintains insurance to cover the costs of defending against claims of this nature and intends to continue to vigorously defend against these claims.

On April 3, 2023, InnoHold, LLC, Terry Pearce, and Tony Pearce (collectively, the “InnoHold Parties”) filed a complaint against Purple LLC in the Delaware Court of Chancery, captioned *InnoHold, LLC et al. v. Purple Innovation, LLC*, Case No. 2023-0393-PAF (Del. Ch. Apr. 3, 2023). The complaint alleges that Purple LLC breached the Second Amended and Restated Limited Liability Company Agreement of Purple Innovation, LLC, dated as of February 2, 2018 (the “LLC Agreement”), and the implied covenant of good faith and fair dealing contained therein by failing to pay the full amount of tax distributions owed under the LLC Agreement. The complaint also asserts a claim for indemnification under the LLC Agreement. The InnoHold Parties seek damages of approximately \$3.0 million in allegedly unpaid tax distributions as well as its legal fees and expenses incurred in connection with the litigation. On June 13, 2023, Purple LLC filed an answer to the complaint denying the InnoHold Parties’ allegations, setting forth its affirmative defenses, and requesting dismissal of all claims and entry of judgment in Purple LLC’s favor. The outcome of the litigation cannot be predicted at this early stage in the proceedings. Purple LLC intends to vigorously defend against these claims.

On March 24, 2023, Purple LLC filed a complaint against Tempur Sealy International, Inc., Sealy Technology LLC and Sealy Mattress Manufacturing Co., LLC (collectively, “Sealy”) in the U.S. District Court for the Middle District of North Carolina for infringement of Purple LLC’s U.S. Patent No. 11,317,733 entitled “Mattress Including an Elastomeric Cushioning Element and a

Pocketed Coil Layer and Related Methods.” On July 17, 2023, Purple LLC filed a First Amended Complaint further detailing Sealy’s infringement of the patent through Sealy’s direct and indirect infringement by making, using, offering for sale, and/or importing into the United States Sealy FlexGrid Hybrid Construction mattresses. Purple seeks judgment of willful infringement, trebled damages, a permanent injunction, prejudgment and post-judgment interest, costs, expenses, and attorneys’ fees. Sealy filed its response to Purple’s First Amended Complaint on July 31, 2023. Discovery has yet to commence; and no trial date has been set. Purple LLC intends to vigorously litigate its claims to resolution.

On March 27, 2023, Sealy Technology, LLC (“Sealy Technology”) filed a Petition for Cancellation with the U.S. Patent and Trademark Office, Trademark Trial and Appeal Board (“TTAB”), seeking cancellation of Purple LLC’s Trademark Registration No. 5,416,146 for HYPER-ELASTIC POLYMER in Class 20 for “elastomeric polymer in pre-shamed form sold as an integral component of pillows” (the “Registration”). On June 6, 2023, Purple LLC filed a motion to dismiss (the “Motion”). On June 9, 2023, the TTAB suspended proceedings pending the resolution of the Motion. On June 18, 2023, Sealy Technology filed a response to the Motion, along with an Amended Petition. The Amended Petition seeks cancellation of the Registration on the basis that the term is generic. Purple LLC filed its reply in support of the Motion, thus completing the briefing, on July 10, 2023. The Motion remains pending, and the proceeding remains suspended pending its resolution. Purple LLC intends to vigorously defend Sealy Technology’s petition.

The Company is from time to time involved in various other claims, legal proceedings and complaints arising in the ordinary course of business. The Company does not believe that adverse decisions in any such pending or threatened proceedings, or any amount that the Company might be required to pay by reason thereof, would have a material adverse effect on the financial condition or future results of the Company.

Related Party Transactions

6 Months Ended

Jun. 30, 2023

[Related Party Transactions](#)

[\[Abstract\]](#)

[Related Party Transactions](#)

15. Related Party Transactions

The Company had various transactions with entities or individuals which are considered related parties.

Coliseum Capital Management, LLC

Immediately following the Business Combination, Adam Gray was appointed to the Company's Board. Mr. Gray is a manager of Coliseum Capital, LLC, which is the general partner of CCP and CDF, and he is also a managing partner of CCM, which is the investment manager of Blackwell and also manages investment funds and accounts. Mr. Gray has voting and dispositive control over securities held by CCP, CDF and Blackwell which were also Lenders under the Amended and Restated Credit Agreement. See Note 14—*Commitments and Contingencies—Subscription Agreement and Preemptive Rights* for further discussion.

On September 17, 2022, the Company received an unsolicited and non-binding proposal from Coliseum on behalf of certain investment funds and accounts to acquire the remaining outstanding common stock of the Company not already beneficially owned by Coliseum for \$4.35 per share in cash. At the time of the offer, Coliseum beneficially owned approximately 44.7% of the outstanding equity of the Company. On September 25, 2022, with the authorization of the Board, a special committee of independent and disinterested directors of the Company (the "Special Committee") was formed to determine the necessary actions to evaluate the Coliseum proposal and determine the course of action that was in the best interests of all the Company's shareholders. Initially, the Special Committee approved the adoption of a limited-duration stockholder rights agreement (the "Rights Agreement") with an expiration date of September 25, 2023. The Special Committee adopted the Rights Agreement in response to Coliseum's substantial increase in ownership of the Company's shares over the last year and the Special Committee's desire to have the time and flexibility necessary to evaluate the unsolicited and non-binding proposal from Coliseum to acquire the outstanding common stock of the Company not already beneficially owned by Coliseum. On January 12, 2023, the Company issued a press release stating the Special Committee had rejected Coliseum's unsolicited proposal.

Upon adopting the Rights Agreement, 300,000 shares of the Company's authorized shares of preferred stock, par value \$0.0001 per share, were designated as Series A Junior Participating Preferred Shares (the "Preferred Shares"). In accordance with the Rights Agreement, on September 25, 2022, the Special Committee authorized and declared a dividend of one preferred share purchase right (a "Right") for each outstanding share of the Company's Class A common stock and Class B common stock to stockholders of record at the close of business on October 6, 2022.

The initial issuance of the Rights as a dividend had no financial accounting or reporting impact. The fair value of the Rights was nominal since the Rights were not exercisable when issued and no value was attributable to them. Additionally, the Rights did not meet the definition of a liability under GAAP and was therefore not accounted for as a long-term obligation. Accordingly, the Rights Agreement had no impact on the Company's consolidated financial statements.

On February 14, 2023, the Company declared a dividend of one new PRPLS for each 100 shares of its common stock owned by the Company's shareholders. Each PRPLS would have voted together with the common stock in the election of directors, and related matters, and carried 10,000 votes each. Holders of PRPLS were entitled to allocate their votes among the nominees in director elections on a cumulative basis. PRPLS holders could have allocated all, none, or a portion of their votes to each director nominee up for election at the Company's meetings of shareholders. On February 24, 2023, the Company issued 1.0 million PRPLS shares which traded with the

common stock. While the PRPLS were outstanding, any new issuance of common stock would have automatically included a proportionate number of PRPLS. The PRPLS were redeemable at any time by an affirmative vote of two-thirds of the members of the Board. The PRPLS did not have any dividend rights and were entitled to only a limited payment upon any liquidation, dissolution or winding up in priority to any payments on the common stock but would not have otherwise participated in any liquidating distributions.

On February 21, 2023, Coliseum filed a lawsuit against the Company and several members of its Board alleging that the Company and the named directors authorized an improper dividend of preferred stock in bad faith to impede stockholder voting rights and interfered with Coliseum's nomination of a competing slate of director candidates ahead of our 2023 annual meeting of stockholders. On April 19, 2023, the Company entered into a Cooperation Agreement with Coliseum to resolve the litigation. The Cooperation Agreement, which became effective on April 27, 2023, resulted in the following:

- The size of the Board was increased from seven directors to eight directors.
- The Company amended and restated its Second Amended and Restated Bylaws to include references to the Lead Independent Director Charter.
- Board member and Coliseum managing partner Adam Gray was appointed Chairman of the Board.
- Board member Gary DiCamillo continued to serve as Lead Independent Director and was appointed chair of the Nomination and Governance Committee.
- Paul Zepf and Pano Anthos resigned as directors of the Company.

The Board appointed S. Hoby Darling, R. Carter Pate, and Erika Serow to fill the vacancies created by the increased the size of the board and the resignations of Mr. Zepf and Mr. Anthos.

- Scott Peterson, a stockholder and Board Observer since the Company's acquisition of Intellibed, was included as a nominee on the Board's slate of directors at the 2023 Annual Meeting in place of Dawn Zier, who had previously announced her decision not to stand for re-election.

- Other than as described above with respect to Dawn Zier, the Board nominated all incumbent directors for election at our annual meetings of stockholders to be held in 2023 and 2024.

- The Company amended its Corporate Governance Guidelines for Operation of the Board of Directors and adopted a Lead Independent Director Charter to provide for the responsibilities of the Lead Independent Director.

- The Company terminated the stockholder rights agreement adopted on September 25, 2022 and agreed not to adopt a new stockholder rights agreement prior to the termination of the Cooperation Agreement without Coliseum's prior consent. As a result, all shares of preferred stock previously designated as Series A Junior Participating Preferred Stock were eliminated and returned to the status of authorized but unissued shares of preferred stock, without designation.

- The Company redeemed all outstanding shares of PRPLS and agreed not to issue any similar security or take any other action prior to the termination of the Cooperation Agreement that would change the stockholder voting standards from those in effect prior to the issuance of the PRPLS. As a result, all shares of preferred stock previously designated as PRPLS were eliminated and returned to the status of authorized but unissued shares of preferred stock, without designation. The

Company made a \$0.1 million payment to redeem the PRPLS based on a record date as of April 28, 2023. The PRPLS redemption payment was reflected in the Company's consolidated balance sheet as a reduction to additional paid-in capital.

- The Company agreed to reimburse Coliseum for up to \$4.0 million of out-of-pocket fees, costs, and expenses incurred in connection with the lawsuit.
- The Company terminated the Special Committee.
- Coliseum dismissed its litigation against the Company.

At the 2023 and 2024 annual meetings of stockholders, Coliseum caused or will cause all of the common stock that Coliseum or any of its affiliates had the direct or indirect right to vote as of the applicable record date, to be present in person or by

- proxy for quorum purposes and to be voted (i) in favor of each of the candidates for election on the Company's slate of nominees for election to the Board, (ii) against any stockholder nominations for any other directors, and (iii) against any proposals or resolutions to remove any member of the Board other than for cause.

Coliseum agreed to be bound by customary standstill restrictions, including, among others, agreements not to acquire additional shares of the Company's securities that would cause Coliseum's ownership of Voting Securities to exceed 44.4% of the total

- outstanding Common Stock (other than acquisitions directly from the Company), engage in proxy solicitations and related matters, form or join any "group" with respect to shares of the Company, encourage others to pursue a "contested solicitation," or make any public proposals, subject to certain exceptions.

Coliseum agreed to condition any proposal from it or any of its affiliates to acquire the Company or all or substantially all of the outstanding stock of the Company held by stockholders unaffiliated with Coliseum on (i) such transaction being negotiated by, and subject to the approval of, a special committee of directors of the Board who

- are independent with respect to Coliseum and disinterested under Delaware law and (ii) a nonwaivable condition that such transaction be approved by the affirmative vote of the holders of a majority of the Company's outstanding common stock not beneficially owned by Coliseum or its affiliates or other parties with a material conflict of interest in such transaction.
- The Cooperation Agreement shall terminate on the day following the date on which the 2024 annual meeting of stockholders is held.

Purple Founder Entities

TNT Holdings, LLC (herein "TNT Holdings"), EdiZONE, LLC, (herein EdiZONE an entity wholly owned by TNT Holdings) and InnoHold (collectively the "Purple Founder Entities") were entities under common control with Purple LLC prior to the Business Combination. TNT Holdings and InnoHold are majority owned and controlled by Terry Pearce and Tony Pearce (the "Purple Founders"), who were appointed to the Company's Board following the Business Combination. InnoHold was a majority shareholder of the Company until it sold a portion of its interests in a secondary public offering in May 2020 and the remainder of its interests in a secondary public offering in September 2020. The Purple Founders also resigned as employees of Purple LLC and retired from the Company's Board in August 2020.

TNT Holdings owned the Alpine facility Purple LLC has been leasing since 2010, and the Purple Founders informed Purple LLC that TNT Holdings recently transferred ownership to 123E LLC, an entity controlled by the Purple Founders. Effective as of October 31, 2017, Purple LLC entered into an Amended and Restated Lease Agreement with TNT Holdings. The Company determined that neither TNT Holdings nor 123E LLC are a VIE as neither the Company nor Purple LLC hold any explicit or implicit variable interest in TNT Holdings or 123E LLC and do not have a controlling financial interest in TNT Holdings or 123E LLC. Purple LLC incurred \$0.3

million and \$0.6 million in rent expense to 123E LLC or TNT Holdings for the building lease of the Alpine facility for the three and six months ended June 30, 2023, respectively, and \$0.2 million and \$0.4 million for the three and six months ended June 30, 2022, respectively. Purple LLC continues to lease the Alpine facility that was formerly the Company headquarters, for use in production, research and development and video production. In accordance with the terms of that lease, on September 3, 2021, Purple LLC gave notice to 123E LLC that it intended to exercise its right to an early termination of the lease to occur on September 30, 2022. On July 20, 2022, the Company entered into an amendment to its Alpine facility lease agreement with 123E LLC. The amendment rescinded the Company's previous notice of termination that was scheduled to be effective September 30, 2022 and extended the term such that the lease will remain in effect until September 30, 2023.

During the six months ended June 30, 2023, a former employee of Purple LLC who received distributions of Paired Securities from InnoHold exchanged a minimal number of Paired Securities for Class A common stock. There were no such exchanges during the six months ended June 30, 2022.

Stockholders' Equity

6 Months Ended

Jun. 30, 2023

[Stockholders' Equity](#)

[\[Abstract\]](#)

[Stockholders' Equity](#)

16. Stockholders' Equity

Class A Common Stock

The Company has 210.0 million shares of Class A common stock authorized at a par value of \$0.0001 per share. Holders of the Company's Class A common stock are entitled to one vote for each share held on all matters to be voted on by the stockholders and participate in dividends, if declared by the Board, or receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock. Holders of Class A common stock and holders of Class B common stock voting together as a single class, have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Holders of Class A common stock and Class B common stock are entitled to one vote per share on matters to be voted on by stockholders. At June 30, 2023, 105.3 million shares of Class A common stock were outstanding.

Class B Common Stock

The Company has 90.0 million shares of Class B common stock authorized at a par value of \$0.0001 per share. Holders of the Company's Class B common stock will vote together as a single class with holders of the Company's Class A common stock on all matters properly submitted to a vote of the stockholders. Shares of Class B common stock may be issued only to InnoHold, their respective successors and assigns, as well as any permitted transferees of InnoHold. A holder may transfer their shares of Class B common stock to any transferee (other than the Company) only if such holder also simultaneously transfers an equal number of such holder's Purple LLC Class B Units to such transferee in compliance with the Third Purple LLC Agreement. The Class B common stock is not entitled to receive dividends, if declared by the Board, or to receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock.

In connection with the Business Combination, approximately 44.1 million shares of Class B common stock were issued to InnoHold as part of the equity consideration. InnoHold subsequently transferred a portion of its shares to permitted transfers and exchanged its remaining shares for Class A common stock that it sold. All of the 0.4 million shares of Class B common stock outstanding at June 30, 2023 were held by other parties.

Preferred Stock

The Company has 5.0 million shares of preferred stock authorized at a par value of \$0.0001 per share. The preferred stock may be issued from time to time in one or more series. The directors are expressly authorized to provide for the issuance of shares of the preferred stock in one or more series and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, designations and other special rights or restrictions. At June 30, 2023, there were no shares of preferred stock outstanding.

On February 14, 2023, the Company declared a dividend of one new PRPLS for each 100 shares of its common stock owned by the Company's shareholders. Each PRPLS had the right to vote together with the common stock in the election of directors, and related matters, and carried 10,000 votes each. Holders of PRPLS were entitled to allocate their votes among the nominees in director elections on a cumulative basis. PRPLS holders could have allocated all, none, or a portion of their votes to each director nominee up for election at the Company's

meetings of shareholders. On February 24, 2023, the Company issued 1.0 million PRPLS shares which traded with the common stock. While the PRPLS were outstanding, any new issuance of common stock would have automatically included a proportionate number of PRPLS. The PRPLS were redeemable at any time by an affirmative vote of two-thirds of the members of the Board. The PRPLS did not have any dividend rights and were entitled to only a limited payment upon any liquidation, dissolution or winding up in priority to any payments on the common stock but would not have otherwise participated in any liquidating distributions. As a result of the Cooperation Agreement, all shares of preferred stock previously designated as PRPLS were eliminated and returned to the status of authorized but unissued shares of preferred stock, without designation. The Company made a \$0.1 million payment to redeem the PRPLS based on a record date as of April 28, 2023. The PRPLS redemption payment was reflected in the Company's consolidated balance sheet as a reduction to additional paid-in capital. At June 30, 2023 there were no PRPLS issued or outstanding. See Note 15—*Related Parties*— *Coliseum Capital Management, LLC* for additional detail regarding redemption of the PRPLS.

Sponsor Warrants

There were 12.8 million sponsor warrants issued pursuant to a private placement simultaneously with the Company's initial public offering. The 1.9 million sponsor warrants that remained outstanding at December 31, 2022 expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement. These sponsor warrants had no fair value on the date of expiration. There were no sponsor warrants exercised during the six months ended June 30, 2022.

Noncontrolling Interest

Noncontrolling interest ("NCI") is the membership interest in Purple LLC held by holders other than the Company. At June 30, 2023 and December 31, 2022, the combined NCI percentage in Purple LLC was 0.4% and 0.5%, respectively. The Company has consolidated the financial position and results of operations of Purple LLC and reflected the proportionate interest held by all such Purple LLC Class B Unit holders as NCI.

Income Taxes

**6 Months Ended
Jun. 30, 2023**

Income Tax Disclosure

[Abstract]

Income Taxes

17. Income Taxes

The Company's sole material asset is Purple LLC, which is treated as a partnership for U.S. federal income tax purposes and for purposes of certain state and local income taxes. Purple LLC's net taxable income and any related tax credits are passed through to its members and are included in the members' tax returns, even though such net taxable income or tax credits may not have actually been distributed. While the Company consolidates Purple LLC for financial reporting purposes, the Company will be taxed on its share of earnings of Purple LLC not attributed to the noncontrolling interest holders, which will continue to bear their share of income tax on its allocable earnings of Purple LLC. The income tax burden on the earnings taxed to the noncontrolling interest holders is not reported by the Company in its consolidated financial statements under GAAP.

The Company reported income tax expense related to various state taxes of \$0.1 million on a pretax loss of \$60.9 million for the six months ended June 30, 2023 as compared to an income tax benefit of \$6.0 million on a pretax loss of \$28.0 million for the six months ended June 30, 2022. This resulted in an effective tax rate of (0.24)% for the six months ended June 30, 2023 as compared to 21.4% for the six months ended June 30, 2022. The Company's effective tax rate for the six months ended June 30, 2023 differs from the statutory federal rate of 21% primarily due to the impact of the full valuation allowance recorded against the Company's deferred tax assets at June 30, 2023.

In connection with the Business Combination, the Company entered into a tax receivable agreement with InnoHold, which provides for the payment by the Company to InnoHold of 80% of the net cash savings, if any, in U.S. federal, state and local income tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the Closing as a result of (i) any tax basis increases in the assets of Purple LLC resulting from the distribution to InnoHold of the cash consideration, (ii) the tax basis increases in the assets of Purple LLC resulting from the redemption by Purple LLC or the exchange by the Company, as applicable, of Class B Paired Securities or cash, as applicable, and (iii) imputed interest deemed to be paid by the Company as a result of, and additional tax basis arising from, payments it makes under the agreement.

As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of their Class B Units, a tax receivable agreement liability may be recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. The amount of the increase in asset basis, the related estimated cash tax savings and the attendant liability to be recorded will depend on the price of the Company's Class A common stock at the time of the relevant redemption or exchange.

The estimation of liability under the tax receivable agreement is by its nature imprecise and subject to significant assumptions regarding the amount and timing of future taxable income. As of June 30, 2023, the Company estimated that if all the remaining 0.4 million Class B units were redeemed for shares of its Class A common stock, the tax receivable agreement liability would be approximately \$168.5 million. If the Company experiences a change of control (as defined under the tax receivable agreement, which includes certain mergers, asset sales and other forms of business combinations and change of control events), it could be required to make an immediate lump-sum payment under the terms of the tax receivable agreement. Management currently estimates the liability associated with this lump-sum payment (or "early termination payment") would be approximately \$110.7 million on a discounted basis. This potential early termination payment can be significantly impacted by the discounted interest rate at the time of termination.

The effects of uncertain tax positions are recognized in the consolidated financial statements if these positions meet a “more-likely-than-not” threshold. For those uncertain tax positions that are recognized in the consolidated financial statements, liabilities are established to reflect the portion of those positions it cannot conclude “more-likely-than-not” to be realized upon ultimate settlement. The Company’s policy is to recognize interest and penalties related to unrecognized tax benefits on the income tax expense line in the accompanying consolidated statement of operations. Accrued interest and penalties would be included on the related tax liability line in the consolidated balance sheet. As of June 30, 2023, no material uncertain tax positions were recognized as liabilities in the condensed consolidated financial statements.

Net Loss Per Common Share

**6 Months Ended
Jun. 30, 2023**

[Net Income \(Loss\) Per
Common Share \[Abstract\]](#)

[Net Loss Per Common Share](#)

18. Net Loss Per Common Share

Basic net income (loss) per common share is calculated by dividing net income (loss) attributable to common stockholders by the weighted average number of shares of Class A stock outstanding during each period. Diluted net income (loss) per share reflects the weighted-average number of common shares outstanding during the period used in the basic net income (loss) computation plus the effect of common stock equivalents that are dilutive.

The following table sets forth the calculation of basic and diluted weighted average shares outstanding and net loss per share for the periods presented (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Numerator:				
Net loss attributable to Purple Innovation, Inc. – basic	\$ (37,509)	\$ (8,340)	\$ (60,809)	\$ (21,842)
Less – net loss attributed to noncontrolling interest	—	(70)	—	(199)
Net loss attributable to Purple Innovation, Inc. – diluted	\$ (37,509)	\$ (8,410)	\$ (60,809)	\$ (22,041)
Denominator:				
Weighted average shares—basic	105,079	82,703	101,760	74,924
Add – dilutive effect of Class B shares	—	448	—	448
Weighted average shares—diluted	105,079	83,151	101,760	75,372
Net loss per common share:				
Basic	\$ (0.36)	\$ (0.10)	\$ (0.60)	\$ (0.29)
Diluted	\$ (0.36)	\$ (0.10)	\$ (0.60)	\$ (0.29)

For the three and six months ended June 30, 2023, the Company excluded 3.0 million and 3.4 million, respectively, of Paired Securities convertible into an equal number of Class A shares, stock options and restricted stock as the effect was anti-dilutive. For the three and six months ended June 30, 2022, the Company excluded 3.3 million and 3.5 million, respectively, of Class A common shares issuable upon conversion of certain warrants, stock options, restricted stock and Class A shares subject to vesting as the effect was anti-dilutive.

Equity Compensation Plans

**6 Months Ended
Jun. 30, 2023**

[Share-Based Payment
Arrangement \[Abstract\]
Equity Compensation Plans](#)

19. Equity Compensation Plans

2017 Equity Incentive Plan

The Purple Innovation, Inc. 2017 Equity Incentive Plan, as amended and restated (the “2017 Plan”), provides for grants of stock options, stock appreciation rights, restricted stock units and other stock-based awards. Directors, officers and other employees and subsidiaries and affiliates, as well as others performing consulting or advisory services for the Company and its subsidiaries, will be eligible for grants under the 2017 Plan. As of June 30, 2023, an aggregate of 2.6 million shares remain available for issuance or use under the 2017 Plan.

Class A Stock Awards

In June 2023, the Company granted stock awards under the 2017 Incentive Plan to non-executive directors on the Board. The stock awards vested immediately and the Company issued 0.2 million shares of Class A common stock and recognized \$0.6 million in expense during the three months ended June 30, 2023, which represented the fair value of the stock awards on the grant date.

Amended and Restated Grant Agreements

On March 15, 2023, in accordance with the 2017 Incentive Plan, the Company entered into amended and restated grant agreements relating to stock options and restricted stock unit awards previously granted to the Company’s chief executive officer in March 2022 and June 2022. The amended agreements revised the vesting schedule of the awards included in each grant. Pursuant to these agreements, 0.3 million of restricted stock units and stock options fully vested on March 25, 2023, another 0.3 million of restricted stock units and stock options, which included conditionally granted awards that were approved by shareholders at the 2023 Annual Meeting, will vest on March 25, 2024, and the remaining 0.3 million of conditionally granted awards approved by shareholders at the 2023 Annual Meeting will vest in full on March 25, 2025. These amendments resulted in the acceleration of \$0.8 million of stock-based compensation expense into the first quarter of 2023 compared to the expense that would have been recorded based on vesting under the original agreements.

Employee Stock Options

Following receipt of shareholder approval of certain amendments to the 2017 Plan at the 2023 Annual Meeting, the 0.3 million stock options granted to the Company’s chief executive officer in June 2023 have an exercise price of \$6.82 per option and expire in four years and vest over a two-year period. The Company determined the fair value of this award to be \$0.1 million on the effective date, which will be expensed on a straight-line basis over the vesting period.

The Company determined the fair value of the options granted during the six months ended June 30, 2023 using the Black Scholes method with the following weighted average assumptions:

Fair market value	\$	0.22
Exercise price	\$	6.82
Risk free interest rate		4.48%
Expected term in years		2.58
Expected volatility		44.98%
Expected dividend yield		—

The following table summarizes the Company's total stock option activity for the six months ended June 30, 2023:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Intrinsic Value (in thousands)
Options outstanding as of January 1, 2023	819	\$ 8.68	2.3	\$ —
Granted	295	6.82	—	—
Exercised	—	—	—	—
Forfeited/cancelled	(240)	7.26	—	—
Options outstanding as of June 30, 2023	874	\$ 8.44	2.7	\$ —

Outstanding and exercisable stock options as of June 30, 2023 are as follows:

Exercise Prices	Options Outstanding		Options Exercisable		
	Number of Options Outstanding (in thousands)	Weighted Average Remaining Life (Years)	Number of Options Exercisable (in thousands)	Weighted Average Remaining Life (Years)	Intrinsic Value (in thousands)
\$ 6.51	151	0.9	151	0.9	\$ —
6.82	500	3.8	167	3.8	—
7.99	19	1.4	19	1.4	—
8.32	108	1.0	105	1.0	—
13.12	61	1.9	49	1.9	—
32.28	35	2.7	21	2.7	—

The following table summarizes the Company's unvested stock option activity for the six months ended June 30, 2023:

	Options (in thousands)	Weighted Average Grant Date Fair Value
Nonvested options as of January 1, 2023	307	\$ 2.84
Granted	295	0.22
Vested	(218)	2.35
Forfeited	(22)	2.70
Nonvested options as of June 30, 2023	362	\$ 0.95

The estimated fair value of Company stock options is amortized over the options vesting period on a straight-line basis. For the three and six months ended June 30, 2023, the Company recognized stock option expense of \$0.1 million and \$0.4 million, respectively. The Company recorded stock option expense of \$0.2 million and \$0.3 million during the three and six months ended June 30, 2022, respectively.

As of June 30, 2023, outstanding stock options had \$0.3 million of unrecognized stock compensation cost with a remaining recognition period of 1.7 years.

Employee Restricted Stock Units

During the second quarter of 2023, the Company granted 2.4 million restricted stock units under the 2017 Incentive Plan to certain members of the Company's management team. Approximately one-half of the restricted stock units granted included a market vesting condition. The restricted stock awards that did not have a market vesting condition had a weighted average grant date fair value of \$2.75 per share. The estimated fair value of these awards is recognized on a straight-line basis over the vesting period. For those awards that include a market vesting condition, the estimated fair value of the restricted stock was measured on the grant date and incorporated the probability of vesting occurring. The estimated fair value is recognized over the derived service period (as determined by the valuation model), with such recognition occurring regardless of whether the market condition is met. The Company determined the weighted average grant date fair value of the awards with the market vesting condition to be \$1.92 per share using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following weighted average assumptions:

Trading price of common stock on measurement date	\$ 2.72
Risk free interest rate	4.29%
Expected life in years	2.7
Expected volatility	89.9%
Expected dividend yield	—

The following table summarizes the Company's restricted stock unit activity for the six months ended June 30, 2023:

	Number Outstanding (in thousands)	Weighted Average Grant Date Fair Value
Nonvested restricted stock units as of January 1, 2023	1,235	\$ 5.47
Granted	2,429	2.33
Vested	(306)	6.24
Forfeited	(165)	6.07
Nonvested restricted stock units as of June 30, 2023	3,193	\$ 2.98

The Company recorded restricted stock unit expense of \$0.9 million and \$1.8 million during the three and six months ended June 30, 2023, respectively, and \$0.5 million and \$0.9 million during the three and six months ended June 30, 2022, respectively.

As of June 30, 2023, outstanding restricted stock units had \$7.7 million of unrecognized stock compensation cost with a remaining recognition period of 2.3 years.

Aggregate Non-Cash Stock-Based Compensation

The Company has accounted for all stock-based compensation under the provisions of ASC 718 *Compensation—Stock Compensation*. This standard requires the Company to record a non-cash expense associated with the fair value of stock-based compensation over the requisite service period.

The following table summarizes the aggregate non-cash stock-based compensation recognized in the statement of operations for stock awards, employee stock options and employee restricted stock units (in thousands):

Three Months Ended June 30,		Six Months Ended June 30,	
2023	2022	2023	2022

Cost of revenues	\$ 23	\$ 104	\$ 98	\$ 170
Marketing and sales	240	266	215	403
General and administrative	1,332	861	2,452	1,184
Research and development	66	44	88	60
Total non-cash stock-based compensation	\$ 1,661	\$ 1,275	\$ 2,853	\$ 1,817

Employee Retirement Plan

**6 Months Ended
Jun. 30, 2023**

[Employee Retirement Plan](#)

[\[Abstract\]](#)

[Employee Retirement Plan](#)

20. Employee Retirement Plan

In July 2018 the Company established a 401(k) plan that qualifies as a deferred compensation arrangement under Section 401 of the IRS Code. All eligible employees over the age of 18 and with 4 months' service are eligible to participate in the plan. The plan provides for Company matching of employee contributions up to 5% of eligible earnings. Company contributions immediately vest. The Company's matching contribution expense was \$0.9 million and \$1.8 million for the three and six months ended June 30, 2023, respectively, and \$0.9 million and \$1.9 million for the three and six months ended June 30, 2022, respectively.

Subsequent Events

**6 Months Ended
Jun. 30, 2023**

[Subsequent Events](#)

[\[Abstract\]](#)

[Subsequent Events](#)

21. Subsequent Events

New Credit Agreements

On August 7, 2023, Purple LLC, Purple Inc. and Intellibed, (collectively the “Loan Parties”) entered into a term loan credit agreement (the “Term Loan Agreement”) with Callodine Commercial Finance, LLC and a group of financial institutions (the “Term Loan Lenders”). Also, on August 7, 2023, the Loan parties entered into a separate financing arrangement with the Bank of Montreal and a group of financial institutions (collectively the “ABL Lenders”) that provides for a revolving asset-based credit facility (the “ABL Agreement”). Pursuant to entering into these agreements, the Company incurred fees and expenses of \$3.1 million that will be reflected as debt issuance costs in the third quarter of 2023.

Term Loan Agreement and Term Loan Pledge and Security Agreement

The Term Loan Agreement provides for up to \$25.0 million of term loans, with up to \$5.0 million of incremental term loans available, subject to certain conditions (collectively, the “Term Loans”). Proceeds from the Term Loans, which were fully drawn at closing, will be used for general corporate purposes. The borrowing rates under the Term Loan Agreement are based on SOFR, plus a credit spread adjustment of 0.15% per annum, plus 8.5% per annum, with a SOFR floor of 2.0% per annum. The Term Loans will be repaid at the earlier of (a) a three-year amortization schedule ending on August 7, 2026 or (b) the payment in full of the ABL Agreement. The Term Loans may be prepaid in whole or in part at any time, but subject to a prepayment premium. There may also be mandatory prepayment obligations based on certain asset dispositions, casualty events and extraordinary receipts. Once repaid, no portion of the Term Loans may be reborrowed.

Pursuant to a pledge and security agreement, the Loan Parties’ obligations under the Term Loan Agreement are secured by a perfected second-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected first-priority security interest in substantially all other assets of the Loan Parties, including, without limitation, the intellectual property and equipment of the Loan Parties, subject to certain exceptions.

The Term Loan Agreement provides for customary events of default such as for non-payment and failure to perform or observe covenants. The Term Loan Agreement contains customary indemnifications that benefit the Term Loan Lenders.

The Term Loan Agreement also contains representations, warranties and certain covenants of the Loan Parties. While any amounts are outstanding under the Term Loan Agreement, the Loan Parties are subject to a number of affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, each of which are subject to certain exceptions. In particular, the Loan Parties are (i) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the Term Loan Agreement, and (ii) required to maintain a minimum revolving loan availability under the ABL Agreement. Each Loan Party is also restricted from paying dividends or making other distributions or payments on its respective capital stock, subject to limited exceptions. If the Loan Parties fail to perform their obligations under these and other covenants, or should any event of default occur, the Term Loans, together with accrued interest, could be declared immediately due and payable.

ABL Agreement and ABL Pledge and Security Agreement

The ABL Agreement provides for up to \$50.0 million of revolving loans subject to a borrowing base calculation (with sub-facilities for swing line loans and the issuance of letters of credit), with incremental increases available up to \$20.0 million, subject to certain conditions (the “ABL Loans”). No funds were drawn under the ABL Agreement at closing. The Company anticipates that any funds drawn from under the ABL Agreement will be used to finance permitted acquisitions defined in the agreement and for working capital, capital expenditures and other general corporate purposes. Outstanding principal and accrued interest on the ABL Loans shall be repaid on August 7, 2026.

The borrowing rates under the ABL Agreement will accrue on a three-tiered grid based on revolving availability, ranging from (i) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 2.75% per annum to (ii) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 3.25% per annum, with a SOFR floor of 0% per annum. The ABL Loans may be prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. There may be mandatory prepayment obligations based on certain asset dispositions, casualty events, equity issuances and extraordinary receipts.

Pursuant to a pledge and security agreement, the Loan Parties’ obligations under the ABL Agreement are secured by a perfected first-priority security interest in the cash, inventory and accounts receivable of the Loan Parties, and a perfected second-priority security interest in substantially all of the other assets of the Loan Parties, subject to certain exceptions.

The ABL Agreement provides for customary events of default such as non-payment and failure to perform or observe covenants. The ABL Agreement contains customary indemnifications that benefit the ABL Lenders.

The ABL Agreement also contains representations, warranties and certain covenants of the Loan Parties. The Loan Parties are subject to affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, in each case, subject to certain exceptions. In particular, the Loan Parties are (i) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the ABL Agreement, and (ii) if revolving availability under the ABL Agreement is less than a specified amount, required to maintain a minimum Consolidated Fixed Charge Coverage Ratio (as defined in the ABL Agreement), and (iii) required to maintain a specified minimum revolving availability. Each Loan Party is also restricted from paying dividends or making other distributions or payments on its respective capital stock, subject to limited exceptions. If the Loan Parties fail to perform their obligations under these and other covenants, or should any event of default occur, the revolving loan commitments under the ABL Agreement may be terminated and any outstanding ABL Loans, together with accrued interest, could be declared immediately due and payable and any outstanding letters of credit may be required to be cash collateralized.

Termination of 2020 Credit Agreement

In connection with the Company’s execution of the Term Loan Agreement and ABL Credit Agreement, the Company terminated its 2020 Credit Agreement. The Company had no outstanding borrowings under the term loan or the revolving line of credit at the time of termination.

Pay vs Performance Disclosure - USD (\$) \$ in Thousands	3 Months Ended		6 Months Ended	
	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023	Jun. 30, 2022
Pay vs Performance Disclosure				
Net Income (Loss)	\$ (37,509)	\$ (8,340)	\$ (60,809)	\$ (21,842)

**Insider Trading
Arrangements**

**3 Months Ended
Jun. 30, 2023**

Trading Arrangements, by Individual

Rule 10b5-1 Arrangement Adopted false

Non-Rule 10b5-1 Arrangement Adopted false

Rule 10b5-1 Arrangement Terminated false

Non-Rule 10b5-1 Arrangement Terminated false

**Accounting Policies, by
Policy (Policies)**

**6 Months Ended
Jun. 30, 2023**

Accounting Policies

[Abstract]

**Basis of Presentation and
Principles of Consolidation**

Basis of Presentation and Principles of Consolidation

The condensed consolidated financial statements include the accounts of Purple Inc., its controlled subsidiary Purple LLC, and Intellibed, Purple LLC's wholly owned subsidiary, from the date of acquisition. All intercompany balances and transactions have been eliminated in consolidation. As of June 30, 2023, Purple Inc. held 99.6% of the common units of Purple LLC and Purple LLC Class B Unit holders held 0.4% of the common units in Purple LLC.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting and reflect the financial position, results of operations and cash flows of the Company. Certain information and note disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. As such, these unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022. The unaudited condensed consolidated financial statements were prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, reflect all adjustments (all of which were considered of normal recurring nature) considered necessary to present fairly the Company's financial results. The results of the three and six months ended June 30, 2023 are not necessarily indicative of the results to be expected for the fiscal year ending December 31, 2023 or for any other interim period or other future year.

Variable Interest Entities

Variable Interest Entities

Purple LLC is a variable interest entity. The Company determined that it is the primary beneficiary of Purple LLC as it is the sole managing member and has the power to direct the activities most significant to Purple LLC's economic performance as well as the obligation to absorb losses and receive benefits that are potentially significant. At June 30, 2023, Purple Inc. had a 99.6% economic interest in Purple LLC and consolidated 100% of Purple LLC's assets, liabilities and results of operations in the Company's unaudited condensed consolidated financial statements contained herein. The holders of Purple LLC Class B Units (the "Class B Units") held 0.4% of the economic interest in Purple LLC as of June 30, 2023. For further discussion see Note 16 — *Stockholders' Equity*.

Use of Estimates

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements in conformity with GAAP requires the Company to establish accounting policies and to make estimates and judgments that affect the reported amounts of assets and liabilities and disclose contingent assets and liabilities as of the date of the unaudited condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. The Company bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. The Company regularly makes significant estimates and assumptions including, but not limited to, estimates that affect revenue recognition, accounts receivable and allowance for credit losses, valuation of inventories, sales returns, warranty returns, fair value of assets acquired and liabilities assumed in a business combination, warrant liabilities, stock based compensation, the recognition and measurement of loss contingencies, estimates of current and deferred income taxes, deferred income tax valuation allowances, and amounts associated with the Company's tax receivable agreement with InnoHold, LLC ("InnoHold"). Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. Actual results could differ materially from those estimates.

Recent Accounting Pronouncements

Measurement of Credit Losses

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (“ASU 2016-13”), which was further updated and clarified by the FASB through issuance of additional related ASUs. This guidance replaces the existing incurred loss impairment guidance and establishes a single allowance framework for financial assets carried at amortized cost based on expected credit losses. The estimate of expected credit losses requires the incorporation of historical information, current conditions, and reasonable and supportable forecasts. These updates are effective for public companies, excluding Smaller Reporting Companies (“SRC”), for annual periods beginning after December 15, 2019, including interim periods therein. The standard is effective for all other entities for annual periods beginning after December 15, 2022, including interim periods therein. The standard is effective for the Company’s interim and annual financial periods beginning January 1, 2023. This standard was adopted utilizing a modified retrospective approach. The adoption of this standard on January 1, 2023 did not have a material impact on the Company’s condensed consolidated financial statements and related disclosures.

Acquisition (Tables)

**6 Months Ended
Jun. 30, 2023**

[Acquisition \[Abstract\]](#)

[Schedule of Consideration for Acquisition of Intellibed](#)

The acquisition date fair value of the consideration transferred for Intellibed was \$28.3 million, which consisted of the following (in thousands):

Fair value of Class A common stock issued at closing	\$ 23,069
Fair value of Class A common stock held in escrow	1,467
Fair value of contingent consideration	1,471
Fair value of effective settlement of preexisting relationships	1,672
Transaction expenses paid on behalf of Intellibed	546
Due to seller	75
Fair value of total purchase consideration	<u>\$ 28,300</u>

[Schedule of Net Tangible Assets \(Liabilities\)](#)

the following table summarizes the preliminary fair value of the assets acquired and liabilities assumed in the acquisition as of the date of acquisition, the measurement period adjustments and the as adjusted as of June 30, 2023 (in thousands):

	At date of acquisition	Measurement period adjustments	As adjusted June 30, 2023
Net tangible assets (liabilities):			
Cash, cash equivalents and restricted cash	\$ 4,194	\$ 12	\$ 4,206
Accounts receivable	5,051	(357)	4,694
Inventory	4,182	(575)	3,607
Other current assets	126	200	326
Property and equipment	7,000	—	7,000
Operating lease right-of-use assets	5,491	—	5,491
Other long-term assets	68	—	68
Accounts payable	(2,285)	(460)	(2,745)
Other current liabilities	(2,818)	545	(2,273)
Operating lease obligations	(4,373)	—	(4,373)
Deferred tax liabilities	(3,868)	(374)	(4,242)
Net tangible assets (liabilities)	12,768	(1,009)	11,759
Goodwill	6,441	(1,420)	5,021
Customer relationships	8,476	2,400	10,876
Developed technology	615	29	644
Net assets acquired and liabilities assumed	<u>\$ 28,300</u>	<u>\$ —</u>	<u>\$ 28,300</u>

**Fair Value Measurements
(Tables)**

**6 Months Ended
Jun. 30, 2023**

[Fair Value Measurements](#)

[\[Abstract\]](#)

[Schedule of Liability Activity](#)

The following table summarizes the Company's total Level 3 liability activity for the six months ended June 30, 2022.

(In thousands)

	Sponsor Warrants
Fair value as of December 31, 2021	\$ 4,343
Fair value of warrants exercised	—
Change in valuation inputs ⁽¹⁾	(4,274)
Fair value as of June 30, 2022	<u>\$ 69</u>

- (1) Changes in valuation inputs are recognized as the change in fair value – warrant liabilities in the condensed consolidated statement of operations.

**Revenue from Contracts
with Customers (Tables)**

**6 Months Ended
Jun. 30, 2023**

**Revenue from Contract with
Customer [Abstract]**

**Schedule of Revenue Disaggregated by
Sales Channel and Product**

The following tables present the Company's net revenue disaggregated by sales category and product type (in thousands)

Sales Category	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
DTC	\$ 68,056	\$ 81,628	\$134,566	\$167,164
Wholesale	52,816	62,481	95,678	120,124
Revenues, net	<u>\$120,872</u>	<u>\$144,109</u>	<u>\$230,244</u>	<u>\$287,288</u>

Product Type	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Sleep products	\$108,296	\$131,738	\$207,131	\$260,704
Other	12,576	12,371	23,113	26,584
Revenues, net	<u>\$120,872</u>	<u>\$144,109</u>	<u>\$230,244</u>	<u>\$287,288</u>

Inventories, Net (Tables)

**6 Months Ended
Jun. 30, 2023**

[Inventory Net \[Abstract\]](#)
[Schedule of Inventories, Net](#)

Inventories, net consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Raw materials	\$27,496	\$ 31,803
Work-in-process	6,834	2,261
Finished goods	45,596	40,476
Inventory obsolescence reserve	(1,524)	(1,343)
Inventories, net	<u>\$78,402</u>	<u>\$ 73,197</u>

**Property and Equipment,
Net (Tables)**

[Property, Plant and Equipment](#)

[\[Abstract\]](#)

[Schedule of Property and Equipment](#)

**6 Months Ended
Jun. 30, 2023**

Property and equipment, net consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Equipment	\$ 71,409	\$ 66,533
Equipment in progress	15,953	19,099
Leasehold improvements	57,969	56,114
Furniture and fixtures	26,939	26,290
Office equipment	3,884	4,393
Total property and equipment	176,154	172,429
Accumulated depreciation	(44,661)	(35,756)
Property and equipment, net	<u>\$131,493</u>	<u>\$ 136,673</u>

Leases (Tables)

6 Months Ended Jun. 30, 2023

[Leases \[Abstract\]](#)

[Schedule of Lease Costs](#)

The following table presents the Company's lease costs (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Operating	\$ 4,620	\$ 3,690	\$ 9,505	\$ 6,838
Variable	1,204	409	2,177	1,123
Short-term	—	—	—	11
Total lease costs	<u>\$ 5,824</u>	<u>\$ 4,099</u>	<u>\$ 11,682</u>	<u>\$ 7,972</u>

[Schedule of Operating Lease Liabilities](#)

The table below reconciles the undiscounted cash flows for each of the first five years and total remaining years to the operating lease liabilities recorded on the condensed consolidated balance sheet at June 30, 2023 (in thousands):

2023 (excluding the six months ended June 30, 2023) ^(a)	\$ 9,760
2024	20,779
2025	20,378
2026	19,173
2027	19,384
Thereafter	71,049
Total operating lease payments	160,523
Less – lease payments representing interest	(32,584)
Present value of operating lease payments	<u>\$ 127,939</u>

(a) Amount consists of \$10.5 million of undiscounted cash flows offset by \$0.8 million of tenant improvement allowances which are expected to be fully utilized in fiscal 2023.

[Schedule of Consolidated Statement of Cash Flows](#)

The following table provides supplemental information related to the Company's condensed consolidated statement of cash flows for the six months ended June 30, 2023 and 2022 (in thousands):

	Six Months Ended June 30,	
	2023	2022
Cash paid for amounts included in present value of operating lease liabilities ^(b)	\$ 6,691	\$ 3,425
Right-of-use assets obtained in exchange for operating lease liabilities	3,518	25,029

Operating cash flows paid for operating leases are included within the change in other assets and liabilities within the Condensed Consolidated Statement of Cash Flows offset by non-cash right-of-use asset amortization and lease liability accretion.

Other Current Liabilities
(Tables)

6 Months Ended
Jun. 30, 2023

[Other Liabilities, Current \[Abstract\]](#)
[Schedule of Other Current Liabilities](#)

Other current liabilities consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Warranty accrual – current portion	\$ 4,624	\$ 4,985
Insurance financing	1,086	1,010
Accrued sales tax liability assumed in acquisition	398	753
Accrued property taxes	408	28
Tax receivable agreement liability – current portion	—	269
Other	843	1,085
Total other current liabilities	\$ 7,359	\$ 8,130

Debt (Tables)**6 Months Ended
Jun. 30, 2023****[Debt Disclosure \[Abstract\]](#)**
[Schedule of Debt](#)

Debt consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Term loan	\$ —	\$ 24,656
Less: unamortized debt issuance costs	—	(999)
Total debt	<u>\$ —</u>	<u>\$ 23,657</u>

Warrant Liabilities (Tables)

6 Months Ended
Jun. 30, 2023

[Warrant Liabilities](#)

[\[Abstract\]](#)

[Schedule of Fair Value of the Sponsor Warrants](#)

The Company determined the fair value of the sponsor warrants using the Black Scholes model with the following assumptions:

	June 30, 2022
Trading price of common stock on measurement date	\$ 3.06
Exercise price	\$ 5.75
Risk free interest rate	2.51%
Warrant life in years	0.6
Expected volatility	98.78%
Expected dividend yield	—

Other Long-Term Liabilities
(Tables)

6 Months Ended
Jun. 30, 2023

[Other Long-Term Liabilities \[Abstract\]](#)

[Schedule of Other Long-Term Liabilities](#)

Other long-term liabilities consist of the following (in thousands):

	June 30, 2023	December 31, 2022
Warranty accrual	\$20,172	\$ 20,744
Asset retirement obligations	2,163	2,098
Other	6	19
Total	22,341	22,861
Less – current portion of warranty accrual	(4,624)	(4,985)
Other long-term liabilities, net of current portion	<u>\$17,717</u>	<u>\$ 17,876</u>

**Commitments and
Contingencies (Tables)**

[Commitments and Contingencies](#)

[\[Abstract\]](#)

[Schedule of Warranty Liabilities](#)

**6 Months Ended
Jun. 30, 2023**

The Company had the following activity for warranty liabilities (in thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Balance at beginning of period	\$ 19,997	\$ 16,368	\$ 20,744	\$ 15,013
Additions charged to expense for current period sales	1,471	2,173	2,167	4,336
Deduction from reserves for current period claims	(1,296)	(832)	(2,739)	(1,640)
Balance at end of period	<u>\$ 20,172</u>	<u>\$ 17,709</u>	<u>\$ 20,172</u>	<u>\$ 17,709</u>

**Net Loss Per Common Share
(Tables)**

**6 Months Ended
Jun. 30, 2023**

**Net Income (Loss) Per Common
Share [Abstract]**

**Schedule of Basic and Diluted
Weighted Average Shares**

Outstanding and Net Loss Per Share

The following table sets forth the calculation of basic and diluted weighted average shares outstanding and net loss per share for the periods presented (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Numerator:				
Net loss attributable to Purple Innovation, Inc. – basic	\$ (37,509)	\$ (8,340)	\$ (60,809)	\$ (21,842)
Less – net loss attributed to noncontrolling interest	—	(70)	—	(199)
Net loss attributable to Purple Innovation, Inc. – diluted	\$ (37,509)	\$ (8,410)	\$ (60,809)	\$ (22,041)
Denominator:				
Weighted average shares—basic	105,079	82,703	101,760	74,924
Add – dilutive effect of Class B shares	—	448	—	448
Weighted average shares—diluted	105,079	83,151	101,760	75,372
Net loss per common share:				
Basic	\$ (0.36)	\$ (0.10)	\$ (0.60)	\$ (0.29)
Diluted	\$ (0.36)	\$ (0.10)	\$ (0.60)	\$ (0.29)

**Equity Compensation Plans
(Tables)**

**6 Months Ended
Jun. 30, 2023**

**Share-Based Payment
Arrangement [Abstract]**

**Schedule of Fair Value of the
Options Granted using the
Black Scholes Method**

The Company determined the fair value of the options granted during the six months ended June 30, 2023 using the Black Scholes method with the following weighted average assumptions:

Fair market value	\$ 0.22
Exercise price	\$ 6.82
Risk free interest rate	4.48%
Expected term in years	2.58
Expected volatility	44.98%
Expected dividend yield	—

**Schedule of Total Stock
Option Activity**

The following table summarizes the Company's total stock option activity for the six months ended June 30, 2023

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Intrinsic Value (in thousands)
Options outstanding as of January 1, 2023	819	\$ 8.68	2.3	\$ —
Granted	295	6.82	—	—
Exercised	—	—	—	—
Forfeited/cancelled	(240)	7.26	—	—
Options outstanding as of June 30, 2023	874	\$ 8.44	2.7	\$ —

**Schedule of Outstanding and
Exercisable Stock Options**

Outstanding and exercisable stock options as of June 30, 2023 are as follows

Exercise Prices	Options Outstanding		Options Exercisable		
	Number of Options Outstanding (in thousands)	Weighted Average Remaining Life (Years)	Number of Options Exercisable (in thousands)	Weighted Average Remaining Life (Years)	Intrinsic Value (in thousands)
\$ 6.51	151	0.9	151	0.9	\$ —
6.82	500	3.8	167	3.8	—
7.99	19	1.4	19	1.4	—
8.32	108	1.0	105	1.0	—
13.12	61	1.9	49	1.9	—
32.28	35	2.7	21	2.7	—

**Schedule of Unvested Stock
Option Activity**

The following table summarizes the Company's unvested stock option activity for the six months ended June 30, 2023:

	Options (in thousands)	Weighted Average Grant Date Fair Value
Nonvested options as of January 1, 2023	307	\$ 2.84
Granted	295	0.22
Vested	(218)	2.35
Forfeited	(22)	2.70

Nonvested options as of June 30, 2023	362	\$ 0.95
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[Schedule of Weighted Average Grant Date Fair Value of the Awards with the Market Vesting Condition](#)

The Company determined the weighted average grant date fair value of the awards with the market vesting condition to be \$1.92 per share using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following weighted average assumptions:

Trading price of common stock on measurement date	\$ 2.72
Risk free interest rate	4.29%
Expected life in years	2.7
Expected volatility	89.9%
Expected dividend yield	—

[Schedule of Restricted Stock Unit Activity](#)

The following table summarizes the Company's restricted stock unit activity for the six months ended June 30, 2023:

	Number Outstanding (in thousands)	Weighted Average Grant Date Fair Value
Nonvested restricted stock units as of January 1, 2023	1,235	\$ 5.47
Granted	2,429	2.33
Vested	(306)	6.24
Forfeited	(165)	6.07
Nonvested restricted stock units as of June 30, 2023	3,193	\$ 2.98

[Schedule of Non-Cash Stock Compensation and Statement of Operations](#)

The following table summarizes the aggregate non-cash stock-based compensation recognized in the statement of operations for stock awards, employee stock options and employee restricted stock units (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Cost of revenues	\$ 23	\$ 104	\$ 98	\$ 170
Marketing and sales	240	266	215	403
General and administrative	1,332	861	2,452	1,184
Research and development	66	44	88	60
Total non-cash stock-based compensation	\$ 1,661	\$ 1,275	\$ 2,853	\$ 1,817

Organization (Details)

Oct. 03, 2022

Organization, Consolidation and Presentation of Financial Statements [Abstract]

Membership interest rate

100.00%

**Summary of Significant
Accounting Policies (Details)**

**6 Months Ended
Jun. 30, 2023 Oct. 03, 2022**

Summary of Significant Accounting Policies (Details) [Line Items]

<u>Common units percentage</u>	99.60%	
<u>Economic interest</u>		100.00%
<u>Purple LLC [Member]</u>		

Summary of Significant Accounting Policies (Details) [Line Items]

<u>Common units percentage</u>	0.40%
<u>Economic interest</u>	99.60%
<u>Liabilities percentage</u>	100.00%
<u>Economic interest</u>	0.40%

**Underwritten Offering of
Class A Common Stock
(Details) - USD (\$)
\$ / shares in Units, shares in
Millions, \$ in Millions**

1 Months Ended	6 Months Ended	
Feb. 28, 2023	Jun. 30, 2023	Feb. 28, 2018

Underwritten Offering of Class A Common Stock (Details)

[Line Items]

Offering fees and expenses

\$ 3.3

Net proceeds

\$ 57.0

Class A Common Stock [Member]

Underwritten Offering of Class A Common Stock (Details)

[Line Items]

Price per shares (in Dollars per share)

\$ 10

Class A Common Stock [Member] | Secondary Offering [Member]

Underwritten Offering of Class A Common Stock (Details)

[Line Items]

Shares of common stock (in Shares)

13.4

Price per shares (in Dollars per share)

\$ 4.5

Acquisition (Details) - USD (\\$) \\$ / shares in Units, shares in Millions, \\$ in Millions	6 Months Ended Jun. 30, 2023	9 Months Ended Sep. Aug. 30, 31, 2022 2022
Acquisition (Details) [Line Items]		
Fair value amount	\$ 28.3	
Fair value of common stock issued description	The fair value of common stock issued at closing consisted of approximately 8.1 million shares of Class A common stock valued using the acquisition date closing price of \$2.86. The fair value of common stock held in escrow consisted of 0.5 million shares of Class A common stock valued using the acquisition date closing price of \$2.86. These shares are being held in escrow pending resolution of net working capital adjustments and certain indemnification matters, as described in the Merger Agreement.	
Fair value of effective settlement	\$ 1.4	
Fair value acquisition amount	0.3	
Other income expense		\$ 1.4
Payable amount	\$ 0.3	
Measurement period	1 year	
Goodwill increased	\$ 0.1	
Cash deposited	\$ 1.7	
Operating expenses description	purpose of the escrow cash amount was to cover Intellibed's estimated state income tax liabilities, sales tax liabilities and related filing expenses that existed prior to the acquisition date.	
Restricted cash		\$ 1.7
Other current liabilities		\$ 1.3
Maximum [Member]		
Acquisition (Details) [Line Items]		
estimated useful lives	10 years	
Minimum [Member]		
Acquisition (Details) [Line Items]		
estimated useful lives	2 years	
Class A Common Stock [Member]		
Acquisition (Details) [Line Items]		
Common stock shares, issued (in Shares)	1.5	

Stock Price (in Dollars per
share) \$ 5

**Acquisition (Details) -
Schedule of Consideration
for Acquisition of Intellibed
\$ in Thousands**

**6 Months Ended
Jun. 30, 2023
USD (\$)**

Schedule of Total Purchase Consideration for the Acquisition of Intellibed [Abstract]

<u>Fair value of Class A common stock issued at closing</u>	\$ 23,069
<u>Fair value of Class A common stock held in escrow</u>	1,467
<u>Fair value of contingent consideration</u>	1,471
<u>Fair value of effective settlement of preexisting relationships</u>	1,672
<u>Transaction expenses paid on behalf of Intellibed</u>	546
<u>Due to seller</u>	75
<u>Fair value of total purchase consideration</u>	\$ 28,300

**Acquisition (Details) -
Schedule of Net Tangible
Assets (Liabilities)
\$ in Thousands**

**6 Months Ended
Jun. 30, 2023
USD (\$)**

[At date of acquisition \[Member\]](#)

[Acquisition \(Details\) - Schedule of Net Tangible Assets \(Liabilities\) \[Line Items\]](#)

Cash, cash equivalents and restricted cash	\$ 4,194
Accounts receivable	5,051
Inventory	4,182
Other current assets	126
Property and equipment	7,000
Operating lease right-of-use assets	5,491
Other long-term assets	68
Accounts payable	(2,285)
Other current liabilities	(2,818)
Operating lease obligations	(4,373)
Deferred tax liabilities	(3,868)
Net tangible assets (liabilities)	12,768
Goodwill	6,441
Customer relationships	8,476
Developed technology	615
Net assets acquired and liabilities assumed	28,300

[Measurement period adjustments \[Member\]](#)

[Acquisition \(Details\) - Schedule of Net Tangible Assets \(Liabilities\) \[Line Items\]](#)

Cash, cash equivalents and restricted cash	12
Accounts receivable	(357)
Inventory	(575)
Other current assets	200
Property and equipment	
Operating lease right-of-use assets	
Other long-term assets	
Accounts payable	(460)
Other current liabilities	545
Operating lease obligations	
Deferred tax liabilities	(374)
Net tangible assets (liabilities)	(1,009)
Goodwill	(1,420)
Customer relationships	2,400
Developed technology	29
Net assets acquired and liabilities assumed	

[As adjusted \[Member\]](#)

[Acquisition \(Details\) - Schedule of Net Tangible Assets \(Liabilities\) \[Line Items\]](#)

Cash, cash equivalents and restricted cash	4,206
Accounts receivable	4,694

<u>Inventory</u>	3,607
<u>Other current assets</u>	326
<u>Property and equipment</u>	7,000
<u>Operating lease right-of-use assets</u>	5,491
<u>Other long-term assets</u>	68
<u>Accounts payable</u>	(2,745)
<u>Other current liabilities</u>	(2,273)
<u>Operating lease obligations</u>	(4,373)
<u>Deferred tax liabilities</u>	(4,242)
<u>Net tangible assets (liabilities)</u>	11,759
<u>Goodwill</u>	5,021
<u>Customer relationships</u>	10,876
<u>Developed technology</u>	644
<u>Net assets acquired and liabilities assumed</u>	\$ 28,300

Fair Value Measurements (Details) - USD (\$) \$ in Thousands	3 Months Ended			6 Months Ended		12 Months Ended
	Jun. 30, 2023	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023	Jun. 30, 2022	Dec. 31, 2022
Fair Value Disclosures [Abstract] Sponsor warrants	\$ 1,900		\$ (346)		\$ (4,274)	\$ 1,900

**Fair Value Measurements
(Details) - Schedule of
Liability Activity - Sponsor
Warrants [Member]
\$ in Thousands**

**6 Months
Ended
Jun. 30, 2022
USD (\$)**

**Fair Value, Liabilities Measured on Recurring Basis, Unobservable Input Reconciliation
[Line Items]**

<u>Fair value, beginning balance</u>	\$ 4,343	
<u>Fair value of warrants exercised</u>		
<u>Change in valuation inputs</u>	(4,274)	[1]
<u>Fair value, ending balance</u>	\$ 69	

[1] Changes in valuation inputs are recognized as the change in fair value – warrant liabilities in the condensed consolidated statement of operations.

**Revenue from Contracts
with Customers (Details) -
USD (\$)
\$ in Millions**

Jun. 30, 2023 Dec. 31, 2022

[Contract Balances \[Member\]](#)

[Revenue from Contracts with Customers \[Line Items\]](#)

Customer Advances, Current	\$ 5.5	\$ 4.5
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**Revenue from Contracts
with Customers (Details) -
Schedule of Revenue
Disaggregated by Sales
Channel and Product - USD
(\$)
\$ in Thousands**

3 Months Ended

6 Months Ended

Jun. 30, 2023 Jun. 30, 2022 Jun. 30, 2023 Jun. 30, 2022

[Sales Category \[Member\]](#)

[Disaggregation of Revenue \[Line Items\]](#)

[Revenues, net](#)

\$ 120,872 \$ 144,109 \$ 230,244 \$ 287,288

[Product Type \[Member\]](#)

[Disaggregation of Revenue \[Line Items\]](#)

[Revenues, net](#)

120,872 144,109 230,244 287,288

[DTC \[Member\] | Sales Category \[Member\]](#)

[Disaggregation of Revenue \[Line Items\]](#)

[Revenues, net](#)

68,056 81,628 134,566 167,164

[Wholesale \[Member\] | Sales Category \[Member\]](#)

[Disaggregation of Revenue \[Line Items\]](#)

[Revenues, net](#)

52,816 62,481 95,678 120,124

[Sleep products \[Member\] | Product Type \[Member\]](#)

[Disaggregation of Revenue \[Line Items\]](#)

[Revenues, net](#)

108,296 131,738 207,131 260,704

[Other \[Member\] | Product Type \[Member\]](#)

[Disaggregation of Revenue \[Line Items\]](#)

[Revenues, net](#)

\$ 12,576 \$ 12,371 \$ 23,113 \$ 26,584

**Inventories, Net (Details) -
Schedule of Inventories, Net
- USD (\$)
\$ in Thousands**

Jun. 30, 2023 Dec. 31, 2022

Schedule of Inventories [Abstract]

<u>Raw materials</u>	\$ 27,496	\$ 31,803
<u>Work-in-process</u>	6,834	2,261
<u>Finished goods</u>	45,596	40,476
<u>Inventory obsolescence reserve</u>	(1,524)	(1,343)
<u>Inventories, net</u>	\$ 78,402	\$ 73,197

Property and Equipment, Net (Details) - USD (\$) \$ in Millions	3 Months Ended		6 Months Ended	
	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023	Jun. 30, 2022
Property, Plant and Equipment [Abstract]				
Capitalized interest	\$ 0.1	\$ 0.2	\$ 0.5	\$ 0.4
Depreciation expense	\$ 4.9	\$ 3.6	\$ 9.7	\$ 7.1

**Property and Equipment,
Net (Details) - Schedule of
Property and Equipment -
USD (\$)**

Jun. 30, 2023 Dec. 31, 2022

\$ in Thousands

Property, Plant and Equipment [Abstract]

<u>Equipment</u>	\$ 71,409	\$ 66,533
<u>Equipment in progress</u>	15,953	19,099
<u>Leasehold improvements</u>	57,969	56,114
<u>Furniture and fixtures</u>	26,939	26,290
<u>Office equipment</u>	3,884	4,393
<u>Total property and equipment</u>	176,154	172,429
<u>Accumulated depreciation</u>	(44,661)	(35,756)
<u>Property and equipment, net</u>	\$ 131,493	\$ 136,673

Leases (Details) - USD (\$) \$ in Millions	6 Months Ended Jun. 30, 2023	Dec. 31, 2022
Lessee [Line Items]		
Initial lease term	16 years	
Right-of-use asset for finance leases (in Dollars)	\$ 0.9	\$ 1.0
Remaining years	5 years	
Amount of undiscounted cash flows (in Dollars)	\$ 10.5	
Tenant improvement allowances (in Dollars)	\$ 0.8	
Minimum [Member]		
Lessee [Line Items]		
Initial lease term	3 years	
Maximum [Member]		
Lessee [Line Items]		
Initial lease term	5 years	
Purple Retail Showrooms [Member]		
Lessee [Line Items]		
Initial lease term	10 years	
Leases [Member]		
Lessee [Line Items]		
Weighted-average remaining term of operating leases	8 years 4 months 24 days	8 years 9 months 18 days
Weighted-average discount rate percentage	5.56%	5.51%

Leases (Details) - Schedule of Lease Costs - USD (\$) \$ in Thousands	3 Months Ended		6 Months Ended	
	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023	Jun. 30, 2022
Schedule Of Lease Costs [Abstract]				
Operating	\$ 4,620	\$ 3,690	\$ 9,505	\$ 6,838
Variable	1,204	409	2,177	1,123
Short-term				11
Total lease costs	\$ 5,824	\$ 4,099	\$ 11,682	\$ 7,972

**Leases (Details) - Schedule of
Operating Lease Liabilities
\$ in Thousands**

**Jun. 30, 2023
USD (\$)**

Schedule Of Operating Lease Liabilities [Abstract]

<u>2023 (excluding the six months ended June 30, 2023)(a)</u>	\$ 9,760	[1]
<u>2024</u>	20,779	
<u>2025</u>	20,378	
<u>2026</u>	19,173	
<u>2027</u>	19,384	
<u>Thereafter</u>	71,049	
<u>Total operating lease payments</u>	160,523	
<u>Less – lease payments representing interest</u>	(32,584)	
<u>Present value of operating lease payments</u>	\$ 127,939	

[1] Amount consists of \$10.5 million of undiscounted cash flows offset by \$0.8 million of tenant improvement allowances which are expected to be fully utilized in fiscal 2023.

**Leases (Details) - Schedule of
Consolidated Statement of
Cash Flows - USD (\$)
\$ in Thousands**

**6 Months Ended
Jun. 30, 2023 Jun.
30,
2022**

Schedule Of Lease Costs [Abstract]

<u>Cash paid for amounts included in present value of operating lease liabilities</u>	[1] \$ 6,691	\$ 3,425
<u>Right-of-use assets obtained in exchange for operating lease liabilities</u>	\$ 3,518	\$ 25,029

[1] Operating cash flows paid for operating leases are included within the change in other assets and liabilities within the Condensed Consolidated Statement of Cash Flows offset by non-cash right-of-use asset amortization and lease liability accretion.

**Other Current Liabilities
(Details) - Schedule of Other
Current Liabilities - Other
Current Liabilities
[Member] - USD (\$)
\$ in Thousands**

**6 Months
Ended 12 Months
Ended**

Jun. 30, 2023 Dec. 31, 2022

Other Current Liabilities (Details) - Schedule of Other Current Liabilities

[Line Items]

<u>Warranty accrual – current portion</u>	\$ 4,624	\$ 4,985
<u>Insurance financing</u>	1,086	1,010
<u>Accrued sales tax liability assumed in acquisition</u>	398	753
<u>Accrued property taxes</u>	408	28
<u>Tax receivable agreement liability – current portion</u>		269
<u>Other</u>	843	1,085
<u>Total other current liabilities</u>	\$ 7,359	\$ 8,130

Debt (Details) \$ in Thousands					1 Months Ended	3 Months Ended		6 Months Ended			
	Feb. 24, 2023	Feb. 17, 2023	Jul. 14, 2022	Mar. 23, 2022	Dec. 31, 2022	Feb. 28, 2018	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023 USD (\$)	Jun. 30, 2022	Sep. 03, 2020
	USD (\$)	USD (\$)	USD (\$)	USD (\$)	USD (\$)	USD (\$)	USD (\$)	USD (\$)		USD (\$)	USD (\$)
Debt Instrument [Line Items]											
Debt issuance fees and expenses									\$ 2,900		
Prepayment term loan					\$ 15,000						
Repaid outstanding term loan	\$ 24,700										
Revised ratio	2										
Leverage ratio	2.00%										
Legal expenses									\$ 5,000		
Line of credit description									the amendment (i) reduced the amount available under the revolving line of credit to \$50.0 million, (ii) provided that the maturity date of the 2020 Credit Agreement would spring forward to June 30, 2024 if consolidated EBITDA was not greater than \$15.0 million for 2023, (iii) reduced limits on maximum growth capital expenditures to \$32.0 million for 2023 and \$35.0 million for 2024 and 2025, and (iv) revised the current minimum liquidity covenant of \$25.0 million to provide that it would increase to \$30.0 million for each three-month period following the applicable fiscal quarter if the leverage ratio was greater than 3.00x for any fiscal quarter ending on or after the third quarter of 2023.		
Unamortized debt issuance costs							\$ 1,200		\$ 1,200		

Aggregate amount	\$			
	4,000			
Interest expense		352	\$	
			707	554
				\$
				1,730
Per year [Member]				
Debt Instrument [Line Items]				
Legal expenses			\$	
			2,000	
2020 Credit Agreement [Member]				
Debt Instrument [Line Items]				
Term loan				\$
				45,000
Amount of revolving line of credit				\$
				55,000
Term loan and revolving line of credit description				
				The term loan was to be repaid in accordance with a five-year amortization schedule or prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. The revolving credit facility had a term of five years and carried the same interest provisions as the term debt. A commitment fee was due quarterly based on the applicable margin applied to the unused total revolving commitment. (See Note 21—Subsequent Events for information on the new asset-based lending arrangement entered into by the Company on August 7, 2023).
Debt issuance fees and expenses	\$			
	300			
Revolving loan		25,000	\$	
			25,000	
Interest rate, description				
				In addition, the interest rate on any outstanding borrowings under the 2020 Credit Agreement was changed from LIBOR with a floor of 0.5% plus an applicable margin (historically at 3.0%) to an initial rate of SOFR with a

floor of 0.5% plus an applicable margin of 4.75%, for a total rate of 5.25% as long as the applicable liquidity threshold is met. If the Company did not meet this threshold, the interest rate would have increased to SOFR with a floor of 0.5% plus 9.00%. Once the Company achieved a consolidated leverage ratio that was below 3.00 to 1.00, the interest rate would have been based on SOFR with a floor of 0.5% plus a 3.00% to 3.75% margin depending on the consolidated leverage ratio.

Revised ratio	3			
Leverage ratio	2.50%			
Interest expense		500	\$ 900 \$ 1,100	\$ 2,000
2020 Credit Agreement				
[Member] First Amendment				
[Member]				
Debt Instrument [Line Items]				
Payment on term loan		\$ 2,500	2,500	
2020 Credit Agreement				
[Member] Second Amendment [Member]				
Debt Instrument [Line Items]				
Debt issuance fees and expenses				\$ 400
2020 Credit Agreement				
[Member] Fourth Quarter [Member]				
Debt Instrument [Line Items]				
Revised ratio	1.5			
2020 Credit Agreement				
[Member]				
Debt Instrument [Line Items]				
Equity interests percentage	35.00%			

[2020 Credit Agreement](#)
[\[Member\] | First Amendment](#)
[\[Member\]](#)

[Debt Instrument \[Line Items\]](#)

[Debt issuance fees and expenses](#) \$ 800

[2020 Credit Agreement](#)
[\[Member\] | Third Quarter](#)
[\[Member\]](#)

[Debt Instrument \[Line Items\]](#)

[Revised ratio](#) 4.5
[PRPLS \[Member\]](#)

[Debt Instrument \[Line Items\]](#)

[Aggregate amount](#) \$
200

Debt (Details) - Schedule of
Debt - USD (\$)
\$ in Thousands

Jun. 30, 2023 Dec. 31, 2022

Schedule of Debt [Abstract]

<u>Term loan</u>	\$ 24,656
<u>Less: unamortized debt issuance costs</u>	(999)
<u>Total debt</u>	\$ 23,657

Warrant Liabilities (Details) - USD (\$) shares in Millions, \$ in Millions	3	6 Months Ended	
	Months		
	Ended		
	Jun.	Jun. 30, 2023	Jun. Feb. 30, 28, 2022 2023
	30, 2022		

[Warrant Liabilities \[Line
Items\]](#)

Warrants outstanding	1.9		1.9 1.9
Fair value			\$ 0.1
Recognized gains	\$ 0.3		\$ 4.3

[Private Placement \[Member\]](#)

[Warrant Liabilities \[Line
Items\]](#)

Sponsor warrants	12.8
Warrants [Member]	

[Warrant Liabilities \[Line
Items\]](#)

[Warrant, description](#)

warrants entitled the registered holder to purchase one-half of one share of the Company's Class A common stock at a price of \$5.75 per half share (\$11.50 per full share), subject to adjustment pursuant to the terms of the warrant agreement. These sponsor warrants contained certain provisions that do not meet the criteria for equity classification and therefore were recorded as liabilities. The liability for these warrants was recorded at fair value on the date of the Business Combination and subsequently re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings.

Warrant Liabilities (Details)
- Schedule of Fair Value of
the Sponsor Warrants -
Black Scholes Model
[Member]

6 Months Ended

Jun. 30, 2022
\$ / shares

Fair Value of Warrant Liabilities [Line Items]

<u>Trading price of common stock on measurement date (in Dollars per share)</u>	\$ 3.06
<u>Exercise price (in Dollars per share)</u>	\$ 5.75
<u>Risk free interest rate</u>	2.51%
<u>Warrant life in years</u>	7 months 6 days
<u>Expected volatility</u>	98.78%
<u>Expected dividend yield</u>	

**Other Long-Term Liabilities
(Details) - Schedule of Other
Long-Term Liabilities - USD
(\$)**

Jun. 30, 2023 Dec. 31, 2022

\$ in Thousands

Schedule of Other Long Term Liabilities [Abstract]

<u>Warranty accrual</u>	\$ 20,172	\$ 20,744
<u>Asset retirement obligations</u>	2,163	2,098
<u>Other</u>	6	19
<u>Total</u>	22,341	22,861
<u>Less – current portion of warranty accrual</u>	(4,624)	(4,985)
<u>Other long-term liabilities, net of current portion</u>	\$ 17,717	\$ 17,876

Commitments and Contingencies (Details) - USD (\$)						1 Months Ended	6 Months Ended
	Apr. 03, 2023	Sep. 22, 2022	Aug. 31, 2022	May 03, 2022	Sep. 20, 2020	Dec. 31, 2022	Feb. 28, 2018 Jun. 30, 2023
Commitments and Contingencies [Line Items]							
Net taxable income, percentage							45.00%
Accrued tax							\$ 100,000
Aggregate amount						\$ 4,000,000	
Subscription agreement and preemptive rights, description						(i) an aggregate of 1.3 million additional shares of Class A common stock to CCP and Blackwell and (ii) an aggregate of 3.3 million warrants to purchase 1.6 million shares of Class A common stock to CCP, Blackwell, and Coliseum Co-Invest Debt Fund, L.P. ("CDF").	
Trade seeking amount					\$ 7,000,000		
Seeks over damages				\$ 100,000			
Purple paid photon agreement				900,000			
Purple withheld payment				\$ 100,000			
Professional service			\$ 4,000,000				
Against numerous entities description		The operative complaint					

alleges that
the
remaining
Defendants
have
infringed
certain
Purple LLC
registered
trademarks,
have
infringed
Purple LLC
trademark
rights and
committed
unfair
competition
under
Lanham Act
§ 43(a),
have
infringed a
certain
Purple LLC
design
patent, have
infringed
certain
Purple LLC
utility
patents,
have
violated
Utah Unfair
Competition
Act, Utah
Code §
13-5a-101 et
seq.; and/or
have
committed
common
law unfair
competition.

Unpaid salary

\$
500,000

Class A Common Stock
[Member]

Commitments and Contingencies [Line Items]

<u>Preferred stock, par value (in Dollars per share)</u>	\$ 10
<u>Purple LLC [Member]</u>	

Commitments and Contingencies [Line Items]

<u>Seeks over damages</u>	4,000,000
<u>Liabe claims amount</u>	\$ 8,000,000

InnoHold, LLC [Member]

Commitments and Contingencies [Line Items]

<u>Seeks over damages</u>	\$ 3,000,000
---------------------------	--------------

**Commitments and
Contingencies (Details) -
Schedule of Warranty
Liabilities - USD (\$)
\$ in Thousands**

3 Months Ended

6 Months Ended

Jun. 30, 2023 Jun. 30, 2022 Jun. 30, 2023 Jun. 30, 2022

Schedule Of Warranty Liabilities [Abstract]

<u>Balance at beginning of period</u>	\$ 19,997	\$ 16,368	\$ 20,744	\$ 15,013
<u>Additions charged to expense for current period sales</u>	1,471	2,173	2,167	4,336
<u>Deduction from reserves for current period claims</u>	(1,296)	(832)	(2,739)	(1,640)
<u>Balance at end of period</u>	\$ 20,172	\$ 17,709	\$ 20,172	\$ 17,709

Related Party Transactions (Details) - USD (\$) \$ / shares in Units, \$ in Millions	Feb. 24, 2023	Feb. 14, 2023	Sep. 17, 2022	1 Months Ended Feb. 14, 2023	3 Months Ended Jun. 30, 2023	Jun. 30, 2022	6 Months Ended Jun. 30, 2023	Jun. 30, 2022	Apr. 28, 2023
Related Party Transaction [Line Items]									
Number shares issue (in Shares)	1,000,000								
Numbers of shares (in Shares)		100		100					
Voting rights		10,000		10,000			one		
Issued amount	\$ 1.0								
Payment to redeem									\$ 0.1
Fees, costs, and expenses amount							\$ 4.0		
Preferred Stock [Member]									
Related Party Transaction [Line Items]									
Number shares issue (in Shares)					300,000		300,000		
Par value of per share (in Dollars per share)					\$ 0.0001		\$ 0.0001		
Purple LLC [Member]									
Related Party Transaction [Line Items]									
Rent expense					\$ 0.3	\$ 0.2	\$ 0.6	\$ 0.4	
Common Stock [Member]									
Related Party Transaction [Line Items]									
Voting securities percentage Coliseum Capital Management [Member]					44.40%		44.40%		
Related Party Transaction [Line Items]									
Per share in cash (in Dollars per share)			\$ 4.35						
Company owned percentage			44.70%						

Stockholders' Equity (Details) - USD (\$)			1 Months Ended	6 Months Ended	12 Months Ended
	Apr. 28, 2023	Feb. 14, 2023	Feb. 14, 2023	Jun. 30, 2023	Dec. 31, 2022 Feb. 24, 2023
Stockholders' Equity (Details) [Line Items]					
Vote for each share		10,000	10,000	one	
Warrants description				The Class B common stock is not entitled to receive dividends, if declared by the Board, or to receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock.	
Common stock issued					1,000,000
Preferred stock authorized				5,000,000	
Preferred stock, par value (in Dollars per share)				\$ 0.0001	
Dividend of common stock			100		
Payment to redeem shares (in Dollars)	\$ 0.1				
Sponsor Warrants [Member]					
Stockholders' Equity (Details) [Line Items]					
Warrants issued				12,800,000	
Warrants outstanding		1,900,000			
Class A Common Stock [Member]					
Stockholders' Equity (Details) [Line Items]					
Common stock authorized		210,000,000		210,000,000	210,000,000
Common stock, par value (in Dollars per share)		\$ 0.0001		\$ 0.0001	\$ 0.0001
Vote for each share				one	
Common stock, shares outstanding				105,300,000	
Class B Common Stock [Member]					

Stockholders' Equity
(Details) [Line Items]

<u>Common stock authorized</u>	90,000,000	90,000,000	90,000,000
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<u>Common stock, par value (in Dollars per share)</u>	\$ 0.0001	\$ 0.0001	\$ 0.0001
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<u>Common stock, shares outstanding</u>		400,000	
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Purple LLC [Member]

Stockholders' Equity
(Details) [Line Items]

<u>Combined NCI percentage</u>		0.40%	0.50%
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InnoHold [Member] | Class B

Common Stock [Member]

Stockholders' Equity
(Details) [Line Items]

<u>Common stock issued</u>		44,100,000	
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Income Taxes (Details) - USD (\$) \$ in Thousands	3 Months Ended		6 Months Ended	
	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023	Jun. 30, 2022
<u>Income Taxes (Details) [Line Items]</u>				
<u>Income benefit</u>			\$ 100	\$ 6,000
<u>Income tax expenses</u>	\$ 72	\$ (4,175)	\$ 144	\$ (5,986)
<u>Effective tax rate</u>			0.24%	21.40%
<u>Statutory federal rate</u>			21.00%	
<u>Estimated future cash tax, percentage</u>			80.00%	
<u>Redemption of shares</u>	400		\$ 400	
<u>Tax receivable agreement liability</u>	\$ 168,500		168,500	
<u>Termination payment</u>			110,700	
<u>Purple LLC [Member]</u>				
<u>Income Taxes (Details) [Line Items]</u>				
<u>Income tax expenses</u>			\$ 60,900	\$ 28,000
<u>InnoHold [Member]</u>				
<u>Income Taxes (Details) [Line Items]</u>				
<u>Cash tax savings percentage</u>			80.00%	

Net Loss Per Common Share (Details) - shares shares in Millions	3 Months Ended		6 Months Ended	
	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023	Jun. 30, 2022
Net Income (Loss) Per Common Share [Abstract]				
Common share issuable upon conversion of warrants	3.0	3.3	3.4	3.5

**Net Loss Per Common Share
(Details) - Schedule of Basic
and Diluted Weighted
Average Shares Outstanding
and Net Loss Per Share -
USD (\$)
\$ / shares in Units, \$ in
Thousands**

3 Months Ended 6 Months Ended

**Jun. 30, Jun. 30, Jun. 30, Jun. 30,
2023 2022 2023 2022**

**Schedule of Basic and Diluted Weighted Average Shares Outstanding
and Net Loss Per Share [Abstract]**

Net loss attributable to Purple Innovation, Inc. – basic

\$ (37,509) \$ (8,340) \$ (60,809) \$ (21,842)

Less – net loss attributed to noncontrolling interest

(70) (199)

Net loss attributable to Purple Innovation, Inc. – diluted

\$ (37,509) \$ (8,410) \$ (60,809) \$ (22,041)

Weighted average shares—basic

105,079 82,703 101,760 74,924

Add – dilutive effect of Class B shares

448 448

Weighted average shares—diluted

105,079 83,151 101,760 75,372

Basic

\$ (0.36) \$ (0.1) \$ (0.6) \$ (0.29)

Diluted

\$ (0.36) \$ (0.1) \$ (0.6) \$ (0.29)

Equity Compensation Plans (Details) - USD (\$) \$ / shares in Units, shares in Millions, \$ in Millions	3 Months Ended				6 Months Ended	
	Mar. 25, 2024	Mar. 25, 2023	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023	Jun. 30, 2022
<u>Equity Compensation Plans [Line Items]</u>						
<u>Restricted stock unit expense</u>			\$ 0.1	\$ 0.2	\$ 0.4	\$ 0.3
<u>stock-based compensation expense</u>					\$ 0.8	
<u>Stock options granted (in Shares)</u>					2.4	
<u>Exercise price of stock option (in Dollars per share)</u>					\$ 6.82	
<u>Fair value stock options granted shares (in Dollars per share)</u>			\$ 2.75		2.75	
<u>Weighted average grant date fair value (in Dollars per share)</u>					\$ 1.92	
<u>Restricted stock unit expense</u>			\$ 0.9	\$ 0.5	\$ 1.8	\$ 0.9
<u>Unrecognized stock compensation cost</u>					2 years 3 months 18 days	
<u>Employee Stock Options [Member]</u>						
<u>Equity Compensation Plans [Line Items]</u>						
<u>Rescinded and cancelled (in Shares)</u>		0.3				
<u>Stock options granted (in Shares)</u>					0.3	
<u>Stock options expire</u>					4 years	
<u>Stock options granted</u>					\$ 0.1	
<u>Unrecognized compensation cost</u>					\$ 0.3	
<u>Remaining recognition period</u>					1 year 8 months 12 days	
<u>Class A Common Stock Awards [Member]</u>						
<u>Equity Compensation Plans [Line Items]</u>						
<u>Common stock, shares issued (in Shares)</u>			0.2		0.2	
<u>Restricted stock unit expense</u>			\$ 0.6			
<u>Subsequent Event [Member]</u>						
<u>Equity Compensation Plans [Line Items]</u>						
<u>Rescinded and cancelled (in Shares)</u>		0.3				
<u>2017 Equity Incentive Plan [Member]</u>						
<u>Equity Compensation Plans [Line Items]</u>						
<u>Shares remain available (in Shares)</u>			2.6		2.6	
<u>Restricted Stock Units (RSUs) [Member]</u>						
<u>Equity Compensation Plans [Line Items]</u>						
<u>Stock option expense</u>					\$ 7.7	

**Equity Compensation Plans
(Details) - Schedule of Fair
Value of the Options
Granted using the Black
Scholes Method**

**6 Months Ended
Jun. 30, 2023
USD (\$)
\$ / shares**

Schedule Of Fair Value Of The Options Granted Using The Black Scholes Method

[Abstract]

<u>Fair market value</u>	\$ 0.22
<u>Exercise price</u>	\$ 6.82
<u>Risk free interest rate</u>	4.48%
<u>Expected term in years</u>	2 years 6 months 29 days
<u>Expected volatility</u>	44.98%
<u>Expected dividend yield \$</u>	

**Equity Compensation Plans
(Details) - Schedule of Total
Stock Option Activity
shares in Thousands**

**6 Months Ended
Jun. 30, 2023
USD (\$)
\$ / shares
shares**

Schedule Of Total Stock Option Activity [Abstract]

<u>Options, outstanding beginning shares</u>	819
<u>Weighted Average Exercise Price, outstanding beginning \$ / shares</u>	\$ 8.68
<u>Weighted Average Remaining Contractual Term in Years, Options outstanding beginning</u>	2 years 3 months 18 days
<u>Intrinsic Value, outstanding beginning \$</u>	
<u>Options, Granted shares</u>	295
<u>Weighted Average Exercise Price, Granted \$ / shares</u>	\$ 6.82
<u>Weighted Average Remaining Contractual Term in Years, Granted</u>	
<u>Intrinsic Value, Granted \$</u>	
<u>Options, Exercised shares</u>	
<u>Weighted Average Exercise Price, Exercised \$ / shares</u>	
<u>Weighted Average Remaining Contractual Term in Years, Exercised</u>	
<u>Intrinsic Value, Exercised \$</u>	
<u>Options, Forfeited/cancelled shares</u>	(240)
<u>Weighted Average Exercise Price, Forfeited/cancelled \$ / shares</u>	\$ 7.26
<u>Weighted Average Remaining Contractual Term in Years, Forfeited/expired</u>	
<u>Intrinsic Value, Forfeited/cancelled \$</u>	
<u>Options, outstanding ending shares</u>	874
<u>Weighted Average Exercise Price, outstanding ending \$ / shares</u>	\$ 8.44
<u>Weighted Average Remaining Contractual Term in Years, Options outstanding ending</u>	2 years 8 months 12 days
<u>Intrinsic Value, outstanding ending \$</u>	

**Equity Compensation Plans
(Details) - Schedule of
Outstanding and Exercisable
Stock Options
shares in Thousands**

**6 Months Ended
Jun. 30, 2023
USD (\$)
\$ / shares
shares**

6.51 [Member]

Schedule of Outstanding and Exercisable Stock Options [Line Items]

<u>Options Outstanding, Exercise Prices \$ / shares</u>	\$ 6.51
<u>Options Outstanding Number of Options Outstanding</u>	151
<u>Options Outstanding Weighted Average Remaining Life (Years)</u>	10 months 24 days
<u>Options Exercisable, Number of Options Exercisable</u>	151
<u>Options Exercisable, Weighted Average Remaining Life (Years)</u>	10 months 24 days
<u>Options Exercisable, Intrinsic Value \$</u>	

6.82 [Member]

Schedule of Outstanding and Exercisable Stock Options [Line Items]

<u>Options Outstanding, Exercise Prices \$ / shares</u>	\$ 6.82
<u>Options Outstanding Number of Options Outstanding</u>	500
<u>Options Outstanding Weighted Average Remaining Life (Years)</u>	3 years 9 months 18 days
<u>Options Exercisable, Number of Options Exercisable</u>	167
<u>Options Exercisable, Weighted Average Remaining Life (Years)</u>	3 years 9 months 18 days
<u>Options Exercisable, Intrinsic Value \$</u>	

7.99 [Member]

Schedule of Outstanding and Exercisable Stock Options [Line Items]

<u>Options Outstanding, Exercise Prices \$ / shares</u>	\$ 7.99
<u>Options Outstanding Number of Options Outstanding</u>	19
<u>Options Outstanding Weighted Average Remaining Life (Years)</u>	1 year 4 months 24 days
<u>Options Exercisable, Number of Options Exercisable</u>	19
<u>Options Exercisable, Weighted Average Remaining Life (Years)</u>	1 year 4 months 24 days
<u>Options Exercisable, Intrinsic Value \$</u>	

8.32 [Member]

Schedule of Outstanding and Exercisable Stock Options [Line Items]

<u>Options Outstanding, Exercise Prices \$ / shares</u>	\$ 8.32
<u>Options Outstanding Number of Options Outstanding</u>	108
<u>Options Outstanding Weighted Average Remaining Life (Years)</u>	1 year
<u>Options Exercisable, Number of Options Exercisable</u>	105
<u>Options Exercisable, Weighted Average Remaining Life (Years)</u>	1 year
<u>Options Exercisable, Intrinsic Value \$</u>	

13.12 [Member]

Schedule of Outstanding and Exercisable Stock Options [Line Items]

<u>Options Outstanding, Exercise Prices \$ / shares</u>	\$ 13.12
<u>Options Outstanding Number of Options Outstanding</u>	61
<u>Options Outstanding Weighted Average Remaining Life (Years)</u>	1 year 10 months 24 days
<u>Options Exercisable, Number of Options Exercisable</u>	49
<u>Options Exercisable, Weighted Average Remaining Life (Years)</u>	1 year 10 months 24 days

[Options Exercisable, Intrinsic Value | \\$](#)

[32.28 \[Member\]](#)

[Schedule of Outstanding and Exercisable Stock Options \[Line Items\]](#)

Options Outstanding, Exercise Prices \$ / shares	\$ 32.28
Options Outstanding Number of Options Outstanding	35
Options Outstanding Weighted Average Remaining Life (Years)	2 years 8 months 12 days
Options Exercisable, Number of Options Exercisable	21
Options Exercisable, Weighted Average Remaining Life (Years)	2 years 8 months 12 days
Options Exercisable, Intrinsic Value \$	

**Equity Compensation Plans
(Details) - Schedule of
Unvested Stock Option
Activity
shares in Thousands**

**6 Months Ended
Jun. 30, 2023
\$ / shares
shares**

Schedule of unvested stock option activity [Abstract]

<u>Options, Beginning Balance shares</u>	307
<u>Weighted Average Grant Date Fair Value, Beginning Balance \$ / shares</u>	\$ 2.84
<u>Options, Granted shares</u>	295
<u>Weighted Average Grant Date Fair Value, Granted \$ / shares</u>	\$ 0.22
<u>Options, Vested shares</u>	(218)
<u>Weighted Average Grant Date Fair Value, Vested \$ / shares</u>	\$ 2.35
<u>Options, Forfeited shares</u>	(22)
<u>Weighted Average Grant Date Fair Value, Forfeited \$ / shares</u>	\$ 2.7
<u>Options, Ending Balance shares</u>	362
<u>Weighted Average Grant Date Fair Value, Ending Balance \$ / shares</u>	\$ 0.95

**Equity Compensation Plans
(Details) - Schedule of
Weighted Average Grant
Date Fair Value of the
Awards with the Market
Vesting Condition - Common
Stock [Member]**

6 Months Ended

**Jun. 30, 2023
USD (\$)
\$ / shares**

Schedule of Weighted Average Grant Date Fair Value of Awards with Market Vesting Condition [Line Items]

<u>Trading price of common stock on measurement date (in Dollars per share) \$ / shares</u>	\$ 2.72
<u>Risk free interest rate</u>	4.29%
<u>Expected life in years</u>	2 years 8 months 12 days
<u>Expected volatility</u>	89.90%
<u>Expected dividend yield (in Dollars) \$</u>	

**Equity Compensation Plans
(Details) - Schedule of
Restricted Stock Unit
Activity
shares in Thousands**

**6 Months
Ended
Jun. 30, 2023
\$ / shares
shares**

Schedule of restricted stock unit activity [Abstract]

<u>Number Outstanding, Nonvested restricted stock units, Beginning Balance shares</u>	1,235
<u>Weighted Average Grant Date Fair Value, Nonvested restricted stock units Beginning Balance \$ / shares</u>	\$ 5.47
<u>Number Outstanding, Granted shares</u>	2,429
<u>Weighted Average Grant Date Fair Value, Granted \$ / shares</u>	\$ 2.33
<u>Number Outstanding, Vested shares</u>	(306)
<u>Weighted Average Grant Date Fair Value, Vested \$ / shares</u>	\$ 6.24
<u>Number Outstanding, Forfeited shares</u>	(165)
<u>Weighted Average Grant Date Fair Value, Forfeited \$ / shares</u>	\$ 6.07
<u>Number Outstanding, Nonvested restricted stock units, Ending Balance shares</u>	3,193
<u>Weighted Average Grant Date Fair Value, Nonvested restricted stock units, Ending Balance \$ / shares</u>	\$ 2.98

**Equity Compensation Plans
(Details) - Schedule of Non-
Cash Stock Compensation
and Statement of Operations
- USD (\$)
\$ in Thousands**

3 Months Ended

6 Months Ended

**Jun. 30,
2023**

**Jun. 30,
2022**

**Jun. 30,
2023**

**Jun. 30,
2022**

**Schedule of Non Cash Stock Compensation and Statement of
Operations [Line Items]**

Total non-cash stock-based compensation

\$ 1,661 \$ 1,275 \$ 2,853 \$ 1,817

Cost of Revenues [Member]

**Schedule of Non Cash Stock Compensation and Statement of
Operations [Line Items]**

Total non-cash stock-based compensation

23 104 98 170

Marketing and Sales [Member]

**Schedule of Non Cash Stock Compensation and Statement of
Operations [Line Items]**

Total non-cash stock-based compensation

240 266 215 403

General and Administrative [Member]

**Schedule of Non Cash Stock Compensation and Statement of
Operations [Line Items]**

Total non-cash stock-based compensation

1,332 861 2,452 1,184

Research and Development [Member]

**Schedule of Non Cash Stock Compensation and Statement of
Operations [Line Items]**

Total non-cash stock-based compensation

\$ 66 \$ 44 \$ 88 \$ 60

Employee Retirement Plan (Details) - USD (\$) \$ in Millions	3 Months Ended		6 Months Ended	
	Jun. 30, 2023	Jun. 30, 2022	Jun. 30, 2023	Jun. 30, 2022
Employee Retirement Plan [Abstract]				
Employee retirement plan, description			The plan provides for Company matching of employee contributions up to 5% of eligible earnings.	
Contribution expense	\$ 0.9	\$ 0.9	\$ 1.8	\$ 1.9

6 Months Ended

Subsequent Events (Details)
- USD (\$)

Jun. 30, 2023

**Sep.
30,
2023**

Subsequent Events (Details)

[Line Items]

Term loan \$ 25,000,000

Incremental term loans \$ 5,000,000

Description of borrowing rate The borrowing rates under the Term Loan Agreement are based on SOFR, plus a credit spread adjustment of 0.15% per annum, plus 8.5% per annum, with a SOFR floor of 2.0% per annum. The Term Loans will be repaid at the earlier of (a) a three-year amortization schedule ending on August 7, 2026 or (b) the payment in full of the ABL Agreement.

ABL Agreement [Member]

Subsequent Events (Details)

[Line Items]

Description of borrowing rate (i) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 2.75% per annum to (ii) SOFR, plus a credit spread adjustment of 0.10% per annum, plus 3.25% per annum, with a SOFR floor of 0% per annum.

Forecast [Member]

Subsequent Events (Details)

[Line Items]

Debt issuance cost \$ 3.1

